

*United States Court of Appeals  
for the Second Circuit*



**APPENDIX**



Docket  
No. **75-7304**

IN THE  
**United States Court of Appeals**  
For the Second Circuit

B

IN THE MATTER OF ARBITRATION

between

STEPHEN E. BRESSETTE, etc.,

*Appellant,*

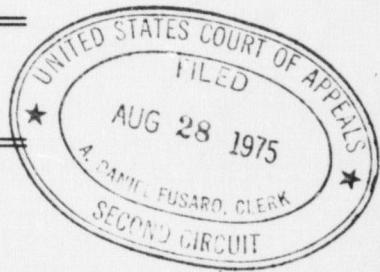
*-and-*

INTERNATIONAL TALC CO., INC., et. al.,

*Appellees.*

On Appeal of A Judgment And Final Order From the Federal  
District Court, Northern District of New York

APPENDIX



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## DOCKET ENTRIES.

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

STEPHEN E. BRESSETTE, et al	:	
Petitioner-Appellant	:	
vs	:	
INTERNATIONAL TALC CO., INC., et al	:	Northern District of
Respondent-Appellee	:	New York
	:	<u>Civil No. 75-CV-106</u>

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## NOTICE OF APPEAL.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

In the Matter of the Arbitration )  
between )  
STEPHEN E. BRESSETTE, as Secretary- )  
Treasurer of Local No. 22727, AFL-CIO, )  
American Federation of Labor and Congress )  
of Industrial Organizations, Box 108, )  
Hailesboro, New York, 13645, )  
Petitioner, )  
-and- )  
INTERNATIONAL TALC COMPANY, INC., )  
95 East Main Street )  
Gouverneur, New York 13642, )  
-and- )  
ST. LAWRENCE LIQUIDATING CORP., )  
P. O. Box 576 )  
Troy, New York 12180, )  
Respondents. ) Civil Action No.  
75-CV-106

## NOTICE OF APPEAL

Notice is hereby given that Stephen E. Bressette, as Secretary-Treasurer of Local No. 22727, AFL-CIO, American Federation of Labor and Congress of Industrial Organizations, Petitioner above-named, hereby appeals to the United States Court of Appeals for the Second Circuit from the order and final judgment denying Petitioner's motion for an order directing arbitration and dismissing the petition, entered in this proceeding on the 18th day of April, 1975.

DATED: May 14, 1975

BLITMAN AND KING

By: /s/ Charles E. Blitman  
Charles E. Blitman

Attorneys for Petitioner, Stephen  
E. Bressette, etc.  
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Syracuse, New York 13202  
Telephone: (315) 422-7111

## MEMORANDUM-DECISION AND ORDER.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

In the Matter of the Arbitration  
Between

STEPHEN E. BRESSETTE, as Secretary-Treasurer  
of Local No. 22727, AFL-CIO, American  
Federation of Labor and Congress of Industrial  
Organizations, Box 108, Hailesboro, New York,  
13645,

Petitioner,

75-CV-106

-and-

INTERNATIONAL TALC COMPANY, INC.,  
95 East Main Street  
Gouverneur, New York, 13642,

-and-

ST. LAWRENCE LIQUIDATING CORP.,  
P. O. Box 576,  
Troy, New York, 12180,

Respondents.

APPEARANCES:

BLITMAN AND KING, ESQS.  
500 Chamber Building  
351 South Warren Street  
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CHARLES E. BLITMAN, ESQ.  
Of Counsel

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Attorneys for Respondents

FREDERIC S. KENDALL, ESQ.  
Of Counsel

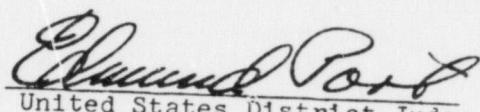
## Memorandum-Decision and Order.

EDMUND PORT, Judge

## ORDER

Upon the stipulations, the evidence, the arguments and on the proceedings had herein, the court having dictated its decision upon the record, it is

ORDERED, that the petitioner's motion for an order directing arbitration be and the same hereby is denied and the petition herein is dismissed.

  
United States District Judge

Dated: April 16, 1975  
Auburn, New York

**NOTICE OF PETITION.**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

In the Matter of the Arbitration  
Between

STEPHEN E. BRESSETTE, as Secretary-Treasurer of Local No. 22727, AFL-CIO, American Federation of Labor and Congress of Industrial Organizations, Box 108 Hailesboro, New York 13645,	)	NOTICE
	)	75-CV-106
Petitioner,	)	
-and-	)	
INTERNATIONAL TALC COMPANY, INC. 95 East Main Street Gouverneur, New York 13642,	)	
-and-	)	
ST. LAWRENCE LIQUIDATING CORP. P. O. Box 576 Troy, New York 12180,	)	
Respondents.	)	Civil Action No.

TO:

INTERNATIONAL TALC COMPANY, INC.  
95 East Main Street  
Gouverneur, New York 13642

-and-

ST. LAWRENCE LIQUIDATING CORP.  
P. O. Box 576  
Troy, New York 12180

PLEASE TAKE NOTICE, that on the annexed Petition of  
STEPHEN E. BRESSETTE, As Secretary-Treasurer of Local No. 22727,

6  
Notice of Petition.

AFL-CIO, American Federation of Labor and Congress of Industrial Organizations, the undersigned will move the above Court at the United States Court House, Federal Building, Syracuse, New York, on the 10th day of March, 1975, at 10:00 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard, for an Order directing that an Arbitration proceed in the manner provided in the agreement executed by and between Local No. 22727, AFL-CIO, American Federation of Labor and Congress of Industrial Organizations and the International Talc Company, Inc. and its successors, said agreement having an effective date of August 1, 1973 and a termination date of July 31, 1974.

DATED: February 19, 1975

BLITMAN AND KING

Charles E. Blitman, Of Counsel

Charles E. Blitman

Attorneys for Petitioner  
Office and Post Office Address  
500 Chamber Building  
351 South Warren Street  
Syracuse, New York 13202

Tel. No. (315) 422-7111

**PETITION.**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

In the Matter of the Arbitration )  
Between )  
STEPHEN E. BRESSETTE, as Secretary- ) PETITION  
Treasurer of Local No. 22727, AFL-CIO, )  
American Federation of Labor and )  
Congress of Industrial Organizations, )  
Box 108 )  
Hailesboro, New York 13645, )  
Petitioner, )  
-and- )  
INTERNATIONAL TALC COMPANY, INC. )  
95 East Main Street )  
Gouverneur, New York 13642, )  
-and- )  
ST. LAWRENCE LIQUIDATING CORP. )  
P. O. Box 576 )  
Troy, New York 12180, )  
Respondents. ) Civil Action No.  
-----

STEPHEN E. BRESSETTE, Secretary-Treasurer of Local No.  
22727, AFL-CIO, American Federation of Labor and Congress of  
Industrial Organizations, respectfully shows:

1. This action arises under Section 301 of the  
Labor Management Relations Act of 1947, as amended (29 U.S.C.  
185) and the United States Arbitration Act (9 U.S.C. Section 4).
2. Petitioner, Local No. 22727, AFL-CIO, American  
Federation of Labor and Congress of Industrial Organizations, is

## Petition.

a labor organization within the meaning of Section 2 and Section 301 of the Labor Management Relations Act of 1947, as amended. Petitioner has an office for the transaction of business located at Box 103, Hailesboro, New York 13645.

3. That Respondent, International Talc Company, Inc., upon information and belief, is a corporation licensed to do business in the State of New York, and is an employer in an industry affecting commerce within the meaning of Section 2 and Section 301 of the Labor Management Relations Act of 1947, as amended.

4. That the Petitioner and the International Talc Company, Inc. entered into a collective bargaining agreement executed on the 1st day of August, 1973, a copy of said agreement is attached hereto and made a part hereof as Exhibit "A".

5. That Section 6 of said collective bargaining agreement is a grievance cause, which, absent agreement between the parties, culminates in binding arbitration.

6. That sometime in 1974 Petitioner filed a grievance, a copy of which is attached hereto as Exhibit "B." Said grievance concerns a dispute existing and arising out of the meaning and/or application of the terms of the attached collective bargaining agreement.

7. That upon information and belief, on or about May 22, 1974, International Talc Company, Inc. adopted a plan of complete liquidation and dissolution at an alleged duly convened shareholders meeting and allegedly authorized the

## Petition.

execution and delivery of a contract of sale of certain of its assets to a purchaser, Gouverneur Talc Company, Inc.

8. That upon information and belief on or about May 23, 1974 International Talc Company, Inc., changed its name to St. Lawrence Liquidating Corp.

9. That on or about May 23, 1974 Respondents notified bargaining unit employees along with other employees of Respondents that they were terminated as of May 23, 1974, as manifested by a copy of a notice attached hereto and made a part hereof as Exhibit "C". Thereafter, Petitioner filed its grievance (Exhibit "B").

10. That the Respondents now fail and refuse to proceed to arbitration under and pursuant to the attached collective bargaining agreement.

WHEREFORE, your Petitioner moves this Court for an Order that arbitration proceed in a manner provided for in the parties' collective bargaining agreement, together with such other and further relief as this Court may deem just and proper.

DATED: February 19, 1975

Local No. 22727, AFL-CIO, American Federation of Labor and Congress of Industrial Organizations

BY: Stephen E. Bressette  
STEPHEN E. BRESSETTE  
Secretary-Treasurer  
Box 108  
Hailesboro, N.Y. 13645

10  
Petition.

STATE OF NEW YORK )  
COUNTY OF JEFFERSON ) ss.:

STEPHEN E. BRESSETTE, being duly sworn, deposes and says that Deponent is the Petitioner in the within action; that Deponent has read the foregoing Petition and knows the contents thereof; that the same is true to Deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters Deponent believes it to be true.

Stephen E. Bressette

Stephen E. Bressette

Sworn to before me this 19-th  
day of February, 1975.

Beverly E. Phelps

Notary Public

BEVERLY E. PHELPS

Notary Public in the State of New York  
My commission expires March 30, 1975

Exhibit A - Agreement  
attached to Petition.

ARTICLES OF AGREEMENT

1 AUGUST 1973 ---- 31 JULY 1974

PREAMBLE: Entered into between the INTERNATIONAL TALC COMPANY, INC. OR SUCCESSORS OR ASSIGNS hereinafter referred to as the "Company" and the "Talc Workers Union" Local No. 22727, AFL-CIO, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS, OR SUCCESSORS OF ASSIGNS, hereinafter designated as the "Union", to cover hours of labor, wages, rules and working conditions at the Mills, Mines and Shops as hereinafter set forth.

The Company agrees to deal with the Union through representatives of its employees in the mills, mines and shops for collective bargaining to the exclusion of all other groups or agencies, and further agrees not to discriminate against any employee because he is a member of the Union.

The former Oswegatchie employees are covered by the terms of this Contract. Certain exceptions and conditions apply to this entity, and are indicated in paragraphs 1 thru 13 noted directly below.

(1) The employees, as of 1 August, 1973 cannot be bumped by International Talc Company personnel under any circumstances.

(2) Concerning Section 3B, "Sunday Pay", the second sentence concerning time and one-half on the fifth day following Sunday work does not apply.

(3) In order to lessen the danger of one man working alone the following will apply: An operator may be requested by the Company to help another operator clean the racks or do any other duty that would be dangerous to one man alone.

Safety apparatus shall be used by the operator while on duty alone.

(4) All overtime work shall be equally divided among the four employees as near as possible.

(5) The operator shall have first chance at any and all extra work in around No. 4 and No. 7 Plants, unless of a highly technical nature

(1)

EXHIBIT A

Exhibit A - Agreement  
attached to Petition.

beyond his ability to perform. --

(6) As concerns seniority, Section 5B does not apply. The seniority of these employees is as of the records of 1 August, 1967.

(7) Section 5D applies.

(8) Section 5E does not apply, and the following will be in effect: "In case of lay-offs, the man, or men, with the least seniority will be laid off."

(9) 5F does not apply.

(10) 5G does not apply. Instead, the following is in effect: "When the Company operates less than the 6-day work week, individuals will be chosen to do work over the work week according to their seniority."

(11) Section 9 does not apply.

(12) Section 15 does not apply.

(13) In case of a shut down of two weeks or more, or a permanent shut down, or the elimination of the job, any ex-International individual may bump into International according to his seniority.

The former Loomis Minerals Company employees (three individuals) become, effective 1 August 1973, International Talc Company employees, with no loss of seniority. That is, they will transfer into International Talc Company with total International rights from their date of employment with the Loomis Minerals Company.

Exhibit A - Agreement  
attached to Petition.

SECTION 1A - UNION EMPLOYEES DEFINED: All present employees shall remain members of the Union in good standing as a condition of employment except as otherwise provided by law. All new employees hired by the Company who remain in the employ of the Company for 30 calendar days shall become members of the Union upon payment of the initiation fee. The Company shall have the right to discharge any new employee during the probationary period, which period shall be for 30 calendar days.

SECTION 1B - OFFICIAL EMPLOYEES DEFINED: It is understood and agreed by both the Company and the Union that office employees and officials of the Company, from Manager to Foreman, inclusive, cannot be members of the Union, and it is further agreed that the Union has no jurisdiction over the above-mentioned employees and officials of the Company. When the Company offers a promotion to a Union employee to fill a Company official position or office position, it will be necessary for such employee either to resign from the Union within 30 days or decline the promotion. If any of the official employees does the work of a classified Union employee, it shall be considered a grievance, except in an emergency, and if no qualified union employee is available.

SECTION 1C - RETURN OF OFFICIAL EMPLOYEE TO UNION: An employee who has left the Union in good standing to take an official position may return to Union work under the following conditions:

1. Within three months he may return to his former Union job with cumulative seniority.
2. After three months but within one year, he may return to Union work with no loss of past or cumulative seniority by mutual agreement with the Union by bidding on a posted

Exhibit A - Agreement  
attached to Petition.

job vacancy, or by taking any open job which he has the ability to perform.

3. After one year an individual returning to the Union and returning only as under 1C (2), will lose any rights he accumulated during the time he was out of the Union, and his seniority will be up-dated to reflect this period. He would not, however, lose any time as concerns his pension and vacation rights.

SECTION 1D - OUTSIDE WORK: All work ordinarily performed by workers on present and new job classifications in the mines or mills shall not be contracted out to a third party. However, any new construction costing \$1,000 or more may be contracted to a third party. If any emergency arises requiring the use of equipment the Company may rent from, lease from, or contract to a third party, as long as employees affected are not laid off.

SECTION 1E - NEW INSTALLATIONS: If the Company establishes new units in the immediate area, present Union employees shall have first change to fill positions according to qualifications and seniority rights.

SECTION 2A - OVERTIME PAYMENTS: All work performed over eight hours per day, or forty hours per week, less all time for which daily overtime has been earned, shall be paid for at the rate of time and one-half.

SECTION 2B - NEW EMPLOYEES: No new men will be hired in any unit until the regular men in that unit have had the opportunity to work forty-eight hours per week for 60 days, except to fill vacancies and except that in

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attached to Petition.

the case of Unit #4 (Arnold Fit), this paragraph will not apply until such time as the work force reaches 13 employees.

**SECTION 3A - HOLIDAYS DEFINED:**

There will be a total of nine Holidays during the Contract year. These holidays fall into two general classes, as follows:

(A) New Years Day, Decoration Day, Fourth of July, Labor Day, Veterans Day, Thanksgiving Day, and Christmas Day are the seven basic holidays. In addition, there will be one "floater" holiday, and the Union may choose any holiday during the Contract year, and the Union agrees to notify the Company by 10 January of the Contract year.

Employees shall be paid for eight hours on these days, even if the mills, mines and shops are not operating. If any of the above holidays falls on a Sunday, the holiday will be celebrated the following Monday. For the purpose of computing weekly overtime pay, the above mentioned holidays shall be considered as a day worked, whether the employee actually worked or not. Any man who works on any of the above days shall be paid double time.

(B) The Employee's Birthday shall be the ninth paid holiday. The employee will have the right to work the day, or take it as a holiday. The intention here is to permit the employee to take the birthday as a holiday, and receive 8 hours pay at the straight time basic rate, or work the holiday and receive his regular pay for that day, and an additional 8 hours pay at the straight time basic rate.

Should the birthday fall on a Saturday not worked, or a Sunday, the employee will be entitled to take the holiday the following Monday, or take 8 hours pay at the straight time basic rate. Those who wish to take this holiday must inform the appropriate supervisor a minimum of one

Exhibit A - Agreement  
attached to Petition.

week in advance of that date.

If the employee takes the holiday, the day will be counted as time worked. If the employee works the holiday, the time for which he was paid for the holiday will not count as time worked; that is, the holiday time will not accumulate for the purpose of computing weekly overtime pay.

SECTION 3B - SUNDAY PAY:

Work performed on Sunday shall be paid for at double time. Time and one-half will be paid on the fifth day following a Sunday worked, provided the five days worked fall between the Sunday worked and the following Sunday.

SECTION 3C - ALLOWANCE FOR JURY DUTY:

An employee who is called for jury service, shall be excused from work for the days on which he serves and he shall receive, for each such day of jury service on which he otherwise would have worked, the difference between eight times his straight-time hourly rate and the payment he receives for jury service. The employee shall present proof of service and of the amount of pay therefor.

Exhibit A - Agreement  
attached to Petition.

SECTION 4 - CALL-IN PAY: All employees reporting for work at the regular times shall, at the discretion of the Company, be given eight hours employment at work designated by the Company, or eight hours pay, if not previously notified that there is no work. However, no such employment or payment shall be required of the Company in case of labor disputes or other conditions beyond the control of the Company, such as; fire in the mills, or mines, or shops; flood; any damage by wind, storm, or other acts of God. Any man called out on an emergency will be paid a minimum of four hours.

SECTION 5A - UNITS DEFINED: There shall be five (5) units in the Company:

1. WIGHT MINE
2. NO. 3 MINE
3. MILLS AND SHOPS (HAILESBORO)
4. ARNOLD PIT
5. MILLS NO. 2 and NO. 3 AND SHOPS (POPPLE HILL)

SECTION 5B - SENIORITY RIGHTS DEFINED: (a) All ex-employees of the Loomis Talc Corporation who were hired by the International Talc Company subsequent to 1 September 1953, and before 6 February, 1955, shall be entitled to the seniority dating back to the date employed according to the records of the Loomis Talc Corporation as compiled on 28 December, 1953. (b) Seniority rights are defined as follows:

- I. INTERNATIONAL: From date of employment by the International Talc Company on a continuous basis.
- II. LOOMIS RIGHTS: From date of employment by the Loomis Talc Corporation on a continuous basis continuing according to the record of the Loomis Talc Corporation as compiled on 28 December 1953.
- III. TOTAL RIGHTS: (Applies only to ex-Loomis employees as

Exhibit A - Agreement  
attached to Petition.

defined under Section 5B (a). . . From date of employment by the Loomis Talc Corp. on a continuous basis, continuing according to the records of the Loomis Talc Corporation as compiled on 28 December 1953, plus any International seniority acquired by continuous service after 1 September, 1953.

SECTION 5C - JOB BIDDING: If vacancies occur at No. 2 MILL and No. 3 MILL and Shops, the position will be posted in the unit and may be filled by any qualified man in that unit, according to total seniority, who desires the job. If no man in the above unit desires the position, any qualified employee in any of the first four units (Section 5A) shall have the right to apply for the vacancy according to his individual seniority. If any individual from any of the other four units (Section 5A) obtains a position in the above-mentioned unit he will retain his International rights or his total seniority (if applicable). If a position becomes vacant in any of the first four units and if no man in the unit desires the job, it will then be posted in all other units. Any qualified employee in another unit shall have the right to apply for the vacancy according to his individual International seniority. (In the event that two or more individuals have the same International seniority and apply for a job then total rights will be the deciding factor as to who will get the job.)

However, any man so transferring from Unit No. 5 will only have International seniority rights in an International unit for purposes of layoffs and/or job bidding.

Such men shall have fifteen working days within which to prove to the satisfaction of the Company and the Union they are so qualified. If for any reason within the fifteen-day period, the employee decides that he desires his previous job back, he will be entitled to same.

Exhibit A - Agreement  
attached to Petition.

All positions that become vacant shall be posted for one working day. The Company will make every effort to notify any absent employees of the vacancy, and if unable to do so, and the employee does not know it, upon return to work will have an opportunity to bid the job.

If the original appointee reverts back within 15 days and no other signer on the original poster wants the position, (or if there was no other signer on the original poster), it will be posted once more only.

SECTION 5D - LOSS OF SENIORITY: Any employee with less than ten years seniority, laid off for lack of work and not rehired after one year shall lose his seniority rights.

An employee with more than ten years seniority, laid off for lack of work and not rehired after two years shall lose his seniority rights.

SECTION 5E - LAYOFFS: In case of layoffs in units due to lack of orders or in case of layoffs due to breakdowns that exceed 40 hours for any given individual, the following will apply: (No individual can get credit for more than 8 hours in any 24-hour period.)

In the event of a layoff occurring in any of the first four above units, (Section 5A) steps one through four (below) will apply:

Step No. 1: The man or men with the least seniority will be laid off.

Step No. 2: Only those positions thus left vacant will be filled by the man whose jobs have been discontinued, except as in the next to last paragraph in Section 5E applies.

Step No. 3: Any man or men laid off in a unit, (Step No. 1) may bump the man or men with the least seniority in the remaining units, provided he has qualified, with the exception of the following skilled jobs: hoistmen and maintenance personnel. However, the latter individual

Exhibit A - Agreement  
attached to Petition.

may be bumped, provided that the individual bumping is completely qualified to do the job, and no learning period will be allowed.

Step No. 4: Upon resumption of operations, all those laid off or shifted to other jobs, (Step No. 1 and Step No. 2) must return to the positions previously held before the layoff, unless in the interim he has bid in a permanent job, and in this event the individual may choose to remain in the new permanent job or return to his old permanent job. Resumption of operations is where the operation is substantially back to where it had been and is not to mean a temporary operation of one section. All men will return according to their individual seniority and, of course, as jobs become available as operations are resumed. However, no man (from above 4 units - Section 5A) may bump a man in Unit No. 5 unless his seniority exceeds the total seniority of the man in the latter unit.

In case of a layoff occurring in Unit 5 the following will apply:

Step No. 1: As above.

Step No. 2: As above

Step No. 3: If any man so bumped (in Unit No. 5) has more International rights than anyone in the remaining four units, provided he has qualified, with the exception of the following skilled jobs; hoistmen and maintenance personnel, he may bump the man or men with the least seniority rights.

Step No. 4: As above.

Any employee having been laid off and subsequently thereto offered a permanent job and who refuses the job shall lose his seniority rights, provided he is capable of doing the work.

If a job is discontinued and subsequently reinstated, the employee ousted due to the layoff shall be reinstated.

If an employee leaves his regular job with the approval of the Company, and the Union, to take another job with the Company, and that job is discontinued, he may revert to his former job, provided the layoff is more than two days. If he cannot revert back to his former job due

Exhibit A - Agreement  
attached to Petition.

to lack of seniority, he may revert back to any previous permanent job he may have had, provided, of course, he has sufficient seniority.

In the event that the Company works less than a 40 hour week, the maintenance personnel may work two additional days, but not to exceed 48 hours, and will not be bumped by other personnel, even if the latter have more seniority.

SECTION 5F: Any man bumping into another unit in order to get forty (40) hours, or more, on a temporary basis, may not bid for another job during this time in the new unit.

SECTION 5G - EXTRA WORK: If the Company decides to work less than a five (5) day week on production, the Company may, on the last day, so called, make repairs on the first shift and then continue operations on production the second and third shifts. This applies to each Mine and Mill as an entity.

If the Company operates a 5-day week and repairs on the sixth day, the following applied:

1. No. 3 Mine: The Hoistman, Repairman, Repairman's Helper and Pumpman will do all work at their classified jobs. If additional men are required for work when operations are shut down, they will be chosen on a roster basis. For operations during the work week, additional men will be chosen on a roster basis, except as provided in Section No. 7B.

2. Mills and Shops (Hailesboro): All men will do any work under their classification. If additional men are required for work when operations are shut down, they will be chosen on a roster basis. For operations during the work week, additional men will be chosen on a roster basis except as provided in Section No. 7B.

Exhibit A - Agreement  
attached to Petition.

3. Wight Mine: The same applies here as under No. 3 Mine (Paragraph 5G-1) except that the hoistman, pumpman and repairman will do all work at their classified jobs.

4. Arnold Pit: Each man will work at his classified job provided the job is being filled. If additional men are required it will be on a roster basis.

5. Mills No. 2 and No. 3 and Shops (Popple Hill): Same as under Mills and Shops (Hailesboro), (Paragraph 5G-2).

When the Company operates a six-day work week or more, all classified employees will have the right to do work under their classifications. If additional work is available, this work will be done by individuals chosen by the Company without regard to seniority.

SECTION 6 - GRIEVANCES: The purpose of the grievance procedure shall be to provide for the orderly and amicable settlement of any and all disputes, differences, and grievances arising out of the meaning or application of the terms of this agreement.

There shall be one grievance man in each unit, except at No. 5 Unit there shall be two men.

Step 1. An employee with a grievance, accompanied by a grievance man shall attempt to resolve his grievance with his immediate supervisor. If the employee presents the grievance to the foreman, the foreman shall, when he renders his decision, inform the steward of such decision in writing. The grievance must be taken to the supervisor within three working days and the supervisor must give his answer within three working days from the presentation of the grievance to him.

Step 2. If the grievance is not settled with the supervisor or the supervisor's answer is not given within the stipulated time, then

Exhibit A - Agreement  
attached to Petition.

within five working days, the aggrieved employee and the grievance committee may present the grievance to the Manager or his representative. The grievance shall be in writing at this step. The Manager, or his representative, shall hear the grievance and give his answer in writing within five working days of the presentation to him.

Step 3. If the grievance is not settled at Step 2, or if the answer is not given within the stipulated time, then within ten working days the aggrieved employee, the grievance committee, the National Union representative, the President and the Secretary of the Union may take the case in writing to the Vice President. The Vice President shall hear the grievance and give his answer in writing within five working days of the presentation to him. (This step will be omitted should the position Vice President - Operations at Hailesboro be vacated.)

Step 4. If the grievance is not settled at Step 3, or the answer is not given within the stipulated time, then the grievance may be taken to the New York Mediation Board for mediation within five working days. The same Union and Company groups covered by Step 3 will be parties to the mediation proceedings.

Step 5. If mediation does not produce a settlement within five working days of the start of mediation, then either party may, after written notice sent within 5 working days to the other party, proceed to arbitration. After the receipt of such notice the arbitrator shall be promptly requested from the New York Board of Mediation Staff members. The arbitrator's decision shall be final and binding on both parties.

The arbitrator shall have no power to add to, subtract from or modify any of the terms of this Agreement.

The fees and expenses of the arbitrator, if any, shall be shared equally by the Company and the Union.

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Exhibit A - Agreement  
attached to Petition.

It shall be understood that if a grievance is not taken to the next step within the stipulated time, it will be considered settled on the basis of the last written decision.

The grievance men and officers of the Union will be paid for reasonable time missed from their regular work shifts to attend scheduled meetings with the Company of processing grievances.

SECTION 7A - VACATIONS: It is the intent of the Company to encourage continuity of employment through paid vacations in the interest of the Company and the employees, and to the greatest degree possible eligible employees shall receive the benefit of vacations from work. Each employee who has been continuously in the employ of the Company for more than one year, but less than five years, shall receive one week's vacation with pay. Each employee who has been continuously in the employ of the Company for five years, but less than ten, shall receive two weeks' vacation with pay. Each employee who has been continuously in the employ of the Company ten years, but less than twenty years, shall receive three weeks' vacation with pay. Each employee who has been continuously in the employ of the Company twenty years shall receive four weeks' vacation with pay. A week's vacation shall consist of seven consecutive days from work, a two weeks' vacation shall consist of fourteen consecutive days from work, a three weeks' vacation shall consist of twenty-one consecutive days from work, and a four weeks' vacation shall consist of twenty-eight consecutive days from work. Vacations will so far as possible be at a time most desired by the employee, but the final right of allotting all vacations is exclusively reserved to the Company, in order to insure orderly operation of the mills, mines and shops. Employees granted vacations will be paid at the hourly rate of the employees and the hours paid will be based on a 48-hour week.

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Exhibit A - Agreement  
attached to Petition.

Temporary layoffs, shutdowns, sickness, or absence due to injury shall not be considered as interrupting continuous service. No employee shall be entitled to more than one vacation in any twelve months' period; however, at the discretion of the Company, and upon application by an employee, vacations may be granted at shorter periods. For the purpose of vacations International rights or total rights will apply.

Since some individuals continue working and receive vacation pay in lieu of taking vacations, it is agreed that the payment of these vacations shall be limited to not more than 8.33% of the working force, by units, in any of the months of January, February or March. Vacation checks will be granted to the earliest applicants until the quota has been reached.

A man taking money in lieu of vacation may subsequently request the equivalent time off and the Company will grant the time off if there is a valid reason, and if it will not upset the orderly operation of the Company, but the final right of allotting all vacations is exclusively reserved to the Company, in order to insure orderly operation of the mills, mines, and shops.

SECTION 7B - WORK ARRANGEMENT WHILE ON VACATION OR ILLNESS: It is agreed that in case of sickness of two weeks or less, vacations of employees on shift work, the regular employees will fill in on that job. For sickness of over two weeks, the Company and Union will agree upon an individual or the unit to fill in on the job in order to avoid overtime.

SECTION 7C - VACATION PERIODS: Vacation periods shall begin June 1st of each year. All employees who have worked 26 weeks, after the first year, from the beginning of the vacation period each year, shall be

Exhibit A - Agreement  
attached to Petition.

entitled to his full vacation. All employees who have worked less than 26 weeks from the vacation period, shall be entitled to 1/12 of his wages for each month worked as a vacation pay. All time lost except for lay-offs and leaves of absence exceeding six months shall be counted as time worked.

SECTION 8 - WAGE INCREASES: The Company agrees to give a general increase of \$0.22 per hour for the period 1 August 1973 to 31 July 1974 for all individuals. The Arnold Pit employees and the road truck drivers will receive \$0.09 per hour over and above the general increase, or \$0.31 per hour. Shift differentials shall be 10¢ for the second shift and 10¢ for the third shift. The contract drilling rate for Wight Mine will be \$11.37 per foot and for No. 3 Mine it will be \$13.32 per foot for the period 1 August 1973 to 31 July 1974. The fiber bonus will be 31.528 cents per ton for the period 1 August 1973 to 31 July 1974.

SECTION 9 INCENTIVE PLANS - MINES:

SECTION 9A - WIGHT: It is understood and agreed that a bonus will be paid to all employees involved except contract drillers while contracting on a basis of \$3.05 per hour per man for all tonnage over 75 tons per day for the period 1 August 1973 to 31 July 1974. This will be referred to as a bonus for over-production and will be paid monthly and based on truck weights and total tonnages with moisture allowance. In the event that one or more men are absent, their daily rate of pay will be divided and paid to the men who are working on those days, provided the minimum tonnage of 75 tons has been hoisted. If in any month the minimum requirement is not reached, it shall be debited during the following months.

Exhibit A - Agreement  
attached to Petition.

In the event of a debit carried to a subsequent month (and a change of personnel has occurred) the then working group will be required to make up the deficit. If lost time occurs due to breakdowns and/or lack of railroad cars, and/or trucks, the time lost will be credited to the employees.

It is agreed that the Company will weigh trucks from Wight Mine; at least one truck a week will be weighed.

SECTION 9B - NO. 3 MINE: It is understood and agreed that a bonus will be paid to all employees involved except contract drillers while contracting on a basis of \$3.03 per hour per man for all tonnage over 36 tons per day for the period 1 August 1973 to 31 July 1974. This will be referred to as a bonus for over-production and will be paid monthly and based on truck weights. In the event that one or more men are absent, their daily rate of pay will be divided and paid to the men who are working on these days, provided the minimum tonnage in effect at the time has been hoisted.

If in any month the minimum requirement is not reached, it shall be debited during the following months.

In the event of a debit carried to a subsequent month (and a change of personnel has occurred) the then working group will be required to make up the deficit. If lost time occurs due to breakdown and/or lack of railroad cars, the time lost will be credited to the employees.

At least one truck per week will be weighed.

Exhibit A - Agreement  
attached to Petition.

SECTION 10A - JOB CLASSIFICATION: The annexed rate classification based on the present rate schedule is made a part of this agreement and shall be in force for the duration of the agreement.

SECTION 10B- JOB CHANGES AND DUTIES: In the event of substantial changes in the duties, increased or decreased, or working conditions of any classifications or position or the establishment of new classifications or positions, proper adjustments of the rate of pay of such present classification or position or establishment of the rate of pay of new classification or positions shall be made by the Company and the Union which (adjustment or establishment) shall be equitable in relation to the Company rate structure.

SECTION 11A - VARIOUS: The Company, the Union and the employees shall cooperate to bring about the best possible efficiency, harmony and relationship. There shall be no slowdowns, strikes or lockouts while negotiations over any dispute are in progress. The Union agrees that the members shall abide by the safety rules of the Company, a copy of which is hereto annexed. In furtherance of the best possible efficiency and the harmony and good relationship between the Company and the Union, it is hereby agreed that the annexed discharge rules are for the best interest of both parties to this contract and shall be the rules governing the discharge of employees, except that any violation of Rules 1 and/or 2, the individual will receive a written warning for the first offence; if he subsequently violates either Rule 1 and/or Rule 2, within a three (3) year period, he will be summarily discharged. Any letter of warning as concerns Rule 1 and/or Rule 2 will be rescinded after three years.

Exhibit A - Agreement  
attached to Petition.

SECTION 11B - COMMITTEE - INCENTIVE PLANS: The Union agrees to appoint a committee to work with the Company in developing an incentive plan or premium system of compensation.

SECTION 11C - EXCESSIVE OVERHEAD: The Union agrees to cooperate with the Company in its efforts to reduce excessive labor-overhead expense.

SECTION 11D - COMMITTEE - MUTUAL INTERESTS: The Union and the Company shall each appoint a committee of not more than five to meet once a month, or more often if thought necessary, to discuss matters of mutual interest. The Union committee shall include the President and Secretary of the Union.

SECTION 12A - CONTRACT DURATION: The contract shall be construed as having taken effect 1 August 1973 and shall continue in effect until 31 July 1974.

SECTION 12B - CONTRACT - NOTICE OF CHANGE: Sixty (60) days prior to the expiration of this contract either party may advise the other that changes are desired. If no notice is given, the contract will remain in effect for another year.

SECTION 13 - JOB CHANGE (TEMPORARY): When it is necessary to move a man to a job paying less than his regular rate, he shall receive his regular rate of pay; but when the rate is higher on the new job, the man will receive the higher rate. However, an employee temporarily transferred to a lower rated job at his own request shall receive the rate of the job performed for all hours worked at such occupation.

If a position is to be temporarily vacant one day or more, the next man in line, according to seniority rights, shall have the right to fill said position, temporarily at the regular wage scale for that position, provided the job continues. All jobs shall be considered continuous unless

permanently eliminated. The above sentence applies to this section only.

SECTION 14A - LEAVE OF ABSENCE: A written agreement covering a leave of absence may be granted for a period not to exceed three months for sickness in the immediate family, vacation, or education, and this leave of absence may not be unreasonably withheld. This may be renewed for a stipulated period by consent of the Union and Company. However, no man leaving thus has the right to obtain other employment without mutual consent of the Company and the Union.

SECTION 14B - BENEFITS WHILE ILL: (1) The employee will receive pay for vacation and paid holidays; his insurance will be continued in force. (2) The employee's seniority will accumulate during such illness. (3) If the injury or illness lasts more than one year, insurance coverage will be continued in force; other benefits will cease. The case will be reviewed every three months by the Company and the Union and they will mutually agree upon its disposition.

SECTION 15 - DRILLING OVER 50 FEET ABOVE LEVEL: It is agreed that when and only when a driller is working more than fifty feet above a working level, he shall have a helper. The above does not apply to sub-levels.

SECTION 16- SUPPER TIME: If employees are asked to work a double shift they shall receive two hours for supper or one hour and have supper furnished by the Company. The cost of the supper shall not exceed one-hour's pay. If employees work over ten hours but not a double shift, one-half hour shall be allotted for a lunch period.

In the event of the enactment of any Statute requiring the payment of double time for overtime, this Section shall be void.

Exhibit A - Agreement  
attached to Petition.

SECTION 17 - HOSPITAL INSURANCE, ETC.: The Company agrees, effective 1 August, 1973 that the cost for the Insurance Program will be continued at a weighted average of \$69.02 per month per employee. Additionally, it is agreed:

- (1) That the stipulated \$69.02 per month per employee represents the ceiling for purchase of insurance benefits for the term of this Contract. Should the cost of the coverage currently in force exceed the sum allocated for the program, the coverage will be reduced to maintain total benefit cost within the confines of total allocation.
- (2) That all money accumulating for the program is to be invested in benefits; no money is to be diverted for the account of the Company, nor for the account of the Union.
- (3) That the carriers for the term of this agreement will be Blue Cross/Blue Shield and the Prudential Insurance Company of America.
- (4) That Union may designate a broker. In this connection, the Company reserves the right to appoint and maintain its own broker.
- (5) That the appropriate insurance booklet or brochure showing the benefits in force will be furnished by the carrier.

Insurance will continue to be paid through the Blue Cross/Blue Shield for such things as Hospitalization and Medical; and the Prudential Life Insurance Company will continue paying benefits for Life Insurance, AD&D, Life Insurance for Dependents, A & S, and Major Medical, all as indicated below.

There are four categories of employees, defined as follows:

- (1) Active and working.
- (2) Disabled and Retired under Disability.
- (3) Early Retirees.
- (4) Retirees age 65 or over.

As concerns Categories 1 and 2, the same benefits will be paid to both of these, with the exception that Category 2 will not receive A & S,

Exhibit A - Agreement  
attached to Petition.

(Disability). Those in Category 3 will have the same benefits as people in Category 2, except that individuals in Category 3, who have been disabled for two years or more are eligible for Medicare, and they will be administered under the Supplemental Blue Cross/Blue Shield, the Company agreeing to pay for Part B.

Retirees in Category 4 will have the Life Insurance reduced to \$2,500, and Life Insurance for Dependents will cease. This category will be under the Supplemental Blue Cross/Blue Shield, as these people will have Medicare, Parts A & F, and the Company agrees to pay for Part B.

The Union agrees that in the case of retirees the Company may benefit from the integration of Company insurance with Medicare. The insurance program will cover all employees and retirees and their dependents.

The Company and the Union agree that one condition of satisfaction on the part of the Carrier will be a semi-annual financial statement of the Fund. This statement will show reserves, disbursements and, if applicable, refunds, and will give a brief description of past experience, estimated future cost, and make recommendations regarding program adjustments, if adjustments are indicated.

All new employees that may be hired will receive the same benefits as old employee after 30 days in the employ of the Company.

The Company also agrees that it will pay the cost of the insurance for any individual (and his family) who is 100% disabled as evidenced by a Workmen's Compensation Board decision or to the satisfaction of the Insurance Carrier.

SECTION 18 - CHECK OFF: The Company agrees that upon receipt of a properly signed request from any Union employee, it will deduct from such employee's wages included in the last closed and calculated pay period in the month, the monthly union dues and any initiation fee, and promptly remit the same to the Secretary-Treasurer of the Talc Workers Union Local No. 22727.

Request by the Union members for deductions shall be made by presenting

Exhibit A - Agreement  
attached to Petition.

a properly signed card to the Company.

SECTION 19 - VETERANS: Any provisions of the Federal or New York State Laws relating to the employment or re-employment of veterans shall apply to such veterans formerly employed by the International Talc Company, Inc. A veteran having been re-hired and having completed three months employment after re-hiring shall be entitled to a vacation under the provisions of Section No. 7. In no event, however, shall the veterans be entitled to vacation pay for the time spent in the service.

SECTION 20 - EMPLOYEE CALL-IN RESPONSIBILITY: It shall be the responsibility of all employees to call by telephone before the start of their shift if they plan to be absent for any reason. If an employee fails to call and the Company in the interim has arranged for another employee or employees to do his work, and further the regular employee arrives late, it shall be the latter's responsibility to communicate or otherwise contact the employee or employees who are to do his work in order to notify him or them that it is now not necessary to have him or them come in. If the employee is unable to notify the employee or employees who are to replace him and they actually start work in his place, the late employee will only be able to work a maximum of four hours on that shift.

SECTION 21 - PERSONAL TIME: Up to three days paid leave of absence will be allowed as needed, when a death occurs in the immediate family, provided that the employee works some time during the week in which the leave is needed. However, absence necessitated by a fatal illness in the immediate family will not deny this benefit to the employee. Immediate family will be considered as father, father-in-law, mother, mother-in-law, sister, brother, wife, children.

SECTION 22 - MISCELLANEOUS:

- A. It is noted herewith that there is a signed agreement between the

Exhibit A - Agreement  
attached to Petition.

Company and the Union concerning a Pension. The improvements in the plan, as negotiated become effective 1 January 1974 and will remain without change until 1 January 1975.

Effective 1 January 1974 there will be an increase of \$1 per month per year of service, making therefore a total of \$7 per month per year of service, to a maximum of 30 years service.

B. All individuals will be entitled to a 15-minute coffee break between 9 and 9:15 A.M. A 15-minute wash-up period will be allowed at the end of a shift for all personnel, except shift workers. Shift workers will be entitled to a mandatory 20-minute lunch period during the course of their shift.

C. There are certain packing contracts which are in effect at this time and these will be elaborated upon in an annex attached hereto.

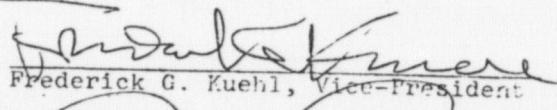
SECTION 23 - EQUAL OPPORTUNITY OF EMPLOYMENT: The Company and the Union agree that this contract shall apply equally to all employees without regard to race, color, sex, creed, religion, or national origin. The Company further agrees to apply the same standards to applicants for employment.

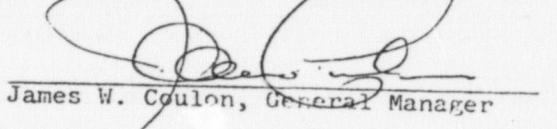
Exhibit A - Agreement  
attached to Petition.

This Agreement entered into 1 August 1973

Attest:

INTERNATIONAL TALC CO., INC.

  
Frederick G. Kuehl, Vice-President

  
James W. Coulon, General Manager

LOCAL NO. 22727, AFL-CIO  
AMERICAN FEDERATION OF LABOR AND  
CONGRESS OF INDUSTRIAL ORGANIZATIONS

George R. Moore, President

Theron F. Rice, Vice-President

Stephen E. Bressette, Secretary/Treasurer

Winston A. McHeffey, Recording Secretary

Leland F. Stanford, Representative  
AFL-CIO

Exhibit B - Letter, dated 7-26-74  
attached to Petition.

TALC WORKERS UNION LOCAL NO. 22727, AFL-CIO  
Hailesboro, New York 13645

July 26, 1974

International Talc Company, Inc.  
and/or St. Lawrence Liquidating Corporation  
P. O. Box 296  
Gouverneur, New York 13642

Dear Sirs:

Talc Workers Union Local No. 22727, AFL-CIO, party to a collective bargaining agreement with your company, effective August 1, 1973, has a dispute with your company as to the meaning and application of the terms of that agreement. The dispute is as follows:

The company has violated the collective bargaining agreement, and the rights of its employees thereunder, by its partial closing, and termination of employees, without notification and bargaining with the Union, without protecting the Union's rights under the successorship clause in the agreement, and by failing to provide adequate information by which the Union can pursue its legal and/or contractual rights; the company has also violated the rights of its employees under the negotiated Pension Plan.

The Union is available to discuss this dispute with you. If we cannot reach agreement on this matter, the dispute will be submitted to arbitration pursuant to the agreement.

Very truly yours,

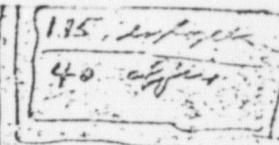
Talc Workers Union Local No. 22727,  
AFL-CIO

By George R. Moore, President /S/

Stephen E. Bressette, Sec.-Treas. /S/

Exhibit C - Letter, dated 5-23-74  
attached to Petition.

420 LEXINGTON AVE., NEW YORK, N.Y. 10017  
Phone 212-532-8533 Cable "FIJAMENTE"



## International Talc Co., Inc.

May 23, 1974

TO: EMPLOYEES OF INTERNATIONAL TALC CO.

At a special meeting held today, the stockholders of International Talc Co., Inc. voted to terminate all of the business of mining, milling and sale of talc and to liquidate the Company.

Your employment with International Talc Co., Inc. is terminated May 23, 1974.

Gouverneur Talc Company, Inc. has purchased the mineral properties and the mills from International and we understand they plan to operate certain of these facilities beginning some time in the near future.

It is possible that Gouverneur Talc Company, Inc. may require some employees to increase their work force and you may wish to make application there for employment.

We have set up a temporary office at 95 East Main St.  
telephone 287-1427 to wind up our affairs  
at Gouverneur. If you have questions you may contact us there.

Your final pay will be available on May 30, 1974 at the above address.

Yours truly,

INTERNATIONAL TALC CO., INC.

*Peter F. McCarthy*  
Peter F. McCarthy  
Executive Vice President

**AFFIDAVIT OF FREDERICK G. KUEHL.**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

In the Matter of the Arbitration  
Between

STEPHEN E. BRESSETTE, as Secretary-Treasurer  
of Local No. 22727, AFL-CIO, American  
Federation of Labor and Congress of  
Industrial Organizations,  
Box 108  
Hailesboro, New York 13645,

Petitioner,

-and-

AFFIDAVIT

INTERNATIONAL TALC COMPANY, INC.  
95 East Main Street  
Gouverneur, New York 13642,

Civil No.

-and-

ST. LAWRENCE LIQUIDATING CORP.  
P. O. Box 576  
Troy, New York 12180,

Respondents.

STATE OF NEW YORK )  
COUNTY OF JEFFERSON) ss.:  
CITY OF WATERTOWN )

FREDERICK G. KUEHL, being duly sworn, deposes and says  
that:

1. He is the Manager of St. Lawrence Liquidating Corporation and makes this affidavit in answer and in opposition to Petitioner's motion to compel arbitration, dated February 19, 1975,

**Affidavit of Frederick G. Kuehl.**

which notice and supporting papers were served upon St. Lawrence Liquidating Corp., on March 4, 1975.

2. St. Lawrence Liquidating Corporation came into existence on May 24, 1974, pursuant to an appropriate filing of a request for certification of a corporate name change filed on May 23, 1974, with the Secretary of State in Albany, New York. This change merely reflected the change of International Talc Company, Inc., to St. Lawrence Liquidating Corporation. The change was made inasmuch as International Talc Company, Inc., had sold its assets to R. T. Vanderbilt Company effective May 23, 1974, and did not want any confusion resulting from bills or liabilities that might be owed by International Talc. Prior to May 24, 1974, deponent held the position of Vice-President of International Talc Company, Inc., and had held that position for about the preceding 12 years.

3. At the time of the sale of the assets to R. T. Vanderbilt Company, International Talc Company, Inc., employed about 115 Union members and 35 Non-Union people. St. Lawrence Liquidating Corp. presently has 4 Non-Union employees for the purposes of winding up its affairs.

4. The so-called Grievance Notice (Petitioner's exhibit "B") dated July 26, 1974, alleges a dispute arising from the partial closing. The business operations of International Talc Company, Inc., and/or St. Lawrence Liquidating Corporation have been entirely closed and the assets sold. The only remaining assets are two small

## Affidavit of Frederick G. Kuehl.

hydroelectric plants near Gouverneur which have been shut down since May 23, 1974. Negotiations for the sale of these assets are presently being conducted with Niagara Mohawk Power Corporation.

5. There is nothing in the Union contract (Petitioner's exhibit "A") which would limit the right of the Company to sell its assets and terminate business. The beleaguered financial condition of the Company necessitated this business decision. The Union has no standing in this matter. Section 6 of the Collective Bargaining Agreement referred to as the Grievance Clause in paragraph 5 of the petition does not apply to the termination of business, as such termination is outside the scope of the contract agreement.

6. The petition to compel arbitration is inappropriate at this time as the petitioner is currently appealing a decision made by the National Labor Relations Board (see Exhibits 1, 2 and 3). That proceeding involved many of the matters of which the petitioner currently complains and it has been held that the Company has notified and bargained with the Union fairly.

7. The petition to compel arbitration is inappropriate at this time as there is a Motion For a Stay of Arbitration of an Hourly Pension Agreement dated April 14, 1960, pending in St. Lawrence County Supreme Court, as indicated by a copy of Judge Shea's letter attached as Exhibit "4".

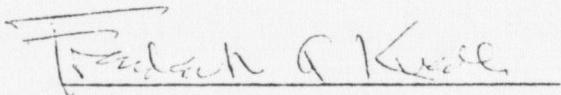
8. The Company has not violated the rights of its employees under the negotiated pension plan, a copy of which is attached as Exhibit "5". The Company elected to terminate the pension plan effective May 23, 1974, so advised the Trustee of the assets and

## Affidavit of Frederick G. Kuehl.

has received permission and authority from the Internal Revenue Service to do so. Thereafter the Trustee paid all pension fund monies over to the Travelers, and the Company paid other monies to purchase annuities sufficient to pay all present retirees and to further provide annuities to workers with ten years of continuous service when they reach age 65. Article 9 Section B Termination of the Plan Number 3 authorizes the Company to make this decision. The Company could have chosen to distribute the fund to persons entitled to such benefits on the basis of the equivalent actuarial values of the allocations; the Company chose to purchase insurance contracts.

9. Any disabilities relative to the pension plan which were not determined as of May 23, 1974, are not eligible for payment because the Plan was terminated.

10. Pursuant to the foregoing reasons, there is no arbitrable dispute or controversy.



Frederick G. Kuehl

Sworn to before me this

6th day of March , 1975.



NOTARY PUBLIC

Exhibit 1 – Letter, dated 1-24-75  
 attached to Kuehl Affidavit.



## NATIONAL LABOR RELATIONS BOARD

REGION 3

111 West Huron Street

Buffalo, New York 14202

Telephone (716) 842-3100

January 24, 1975

Charles E. Blitman, Esq.  
 Blitman & King  
 351 S. Warren Street  
 Syracuse, New York 13202

Re: International Talc Company, Inc.  
 and/or St. Lawrence Liquidating Corp.  
 Case No. 3-CA-5906

Dear Mr. Blitman:

The above-captioned case charging a violation under Section 8 of the National Labor Relations Act, as amended, has been carefully investigated and considered.

As a result of the investigation, it does not appear that further proceedings on the charge are warranted inasmuch as the investigation revealed insufficient evidence that the Employer has unlawfully refused to bargain over its decision to terminate its plant's operation, sale of its assets, the effects of this decision on its employees, or that it discriminated against its employees in regard to their job tenure. Rather, it appears that on or about May 23, 1974, the Employer informed the Union that it intended to sell the physical assets of the plant to R.T. Vanderbilt. Further, it appears that about the end of May, the beginning of June 1974; on June 25, 1974; July 1, 1974; and August 29, 1974, the Employer and the Union met to discuss the plant termination and consequent affects on the employees. During the course of these meetings, Employer and Union proposals were exchanged and eventually the Employer paid the benefits it outlined in its proposals to the employees on October 1, 1974. The investigation revealed that the Union did not protest this action and did not request any further negotiations. With regard to the allegation of discrimination by the Employer against its employees, it appears that on May 23, 1974, the employees were notified of their termination due to the sale of the operation and advised to file applications with the new owner. There is no evidence or information to indicate that the Employer herein has any control or influence over the hire of its former employees by the new owner, R. T. Vanderbilt. I am, therefore, refusing to issue complaint in this matter.

EXHIBIT "1"

Exhibit 1 - Letter, dated 1-24-75  
attached to Kuehl Affidavit.

Pursuant to the National Labor Relations Board Rules and Regulations, you may obtain a review of this action by filing an appeal with the General Counsel addressed to the Office of Appeals, National Labor Relations Board, Washington, D. C. 20570 and a copy with me. This appeal must contain a complete statement setting forth the facts and reasons upon which it is based. The appeal must be received by the General Counsel in Washington, D. C. by the close of business on February 6, 1975. Upon good cause shown, however, the General Counsel may grant special permission for a longer period within which to file. A copy of any such request for extension of time should be submitted to me.

If you file an appeal, please complete the notice forms I have enclosed with this letter and send one copy of the form to each of the other parties. Their names and addresses are listed below. The notice forms should be mailed at the same time you file the appeal, but mailing the notice forms does not relieve you of the necessity for filing the appeal itself with the General Counsel and a copy of the appeal with the Regional Director within the time stated above.

Very truly yours,

Attachments

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

THOMAS W. SEEGER  
Regional Director

cc: General Counsel  
National Labor Relations Board  
Washington, D. C. 20570

Data Processing Section

International Talc Company, Inc.  
and/or St. Lawrence Liquidating Corp.  
95 East Main Street  
Gouverneur, New York 13642

Edmund J. Duffy, Esq.  
Robert E. Gray, Esq.  
Bartla, McGrane, Duffy & Murray  
251 River Street  
Troy, New York 12180

Talc Workers Union, Local No. 22727, AFL-CIO  
Attn: Steven Bressette, Sect.-Treas.  
Box 108  
Hailesboro, New York 13643

Exhibit 2 - Letter, dated 2-5-75  
attached to Kuehl Affidavit.



## NATIONAL LABOR RELATIONS BOARD

### OFFICE OF THE GENERAL COUNSEL

Washington, D.C. 20570

February 5, 1975

Re: International Talc Company, Inc.  
and/or St. Lawrence Liquidating  
Corporation  
Case No. 3-CA-5906

Charles E. Blitman, Esquire  
Blitman & King  
500 Chambers Building  
351 South Warren Street  
Syracuse, New York 13202

Dear Mr. Blitman:

Receipt of your appeal from the Regional Director's refusal to issue complaint in the above matter is acknowledged.

With respect to your request for an extension of time, you are hereby granted until February 27, 1975, to file any additional material you may wish to submit in support of your appeal. Please furnish the Regional Director with a copy of any such material.

Please be assured your appeal will receive careful considerations and you and all interested parties will be advised, as soon as possible after the extension period, when a decision has been reached.

Very truly yours,

Peter G. Nash  
General Counsel

By Robert E. Allen  
Robert E. Allen  
Director, Office of Appeals

cc: Director, Region 3

International Talc Company, Inc., and/or St. Lawrence  
Liquidating Corp., 95 E. Main St., Gouverneur, New  
York 13642

(cont'd next page)

*Exhibit "2"*

Exhibit 2 - Letter, dated 2-5-75  
attached to Kuehl Affidavit.

Re: Case No. 3-CA-5906

-2-

cc: Edmund J. Duffy, Esq., Robert E. Gray, Esq., Bartle, McCrane,  
Duffy & Murray, 251 River St., Troy, New York 12180

Talc Workers Union, Local No. 22727, AFL-CIO, Attn: Steven  
Bressett, Sec.-Treas., Box 108, Hailesboro, New York  
13645

Exhibit 3 – Letter, dated 2-28-75  
 attached to Kuehl Affidavit.



NATIONAL LABOR RELATIONS BOARD  
 OFFICE OF THE GENERAL COUNSEL

Washington, D.C. 20570

February 28, 1975

Re: International Talc Company, Inc.  
 and/or St. Lawrence Liquidating,  
 Corporation  
 Case No. 3-CA-5906

Charles E. Blitman, Esq.  
 Blitman & King  
 500 Chamber Building  
 351 South Warren Street  
 Syracuse, New York 13202

Dear Mr. Blitman:

This is to acknowledge receipt of your correspondence dated February 24, 1975, wherein you are requesting oral presentation in the above matter. It does not appear at this time that oral argument will tend materially to advance resolution of the issues presented. If, after review of the file we feel that such argument is warranted, we will be in further communication with you.

Very truly yours,

Peter G. Nash  
 General Counsel

By Robert E. Allen  
 Robert E. Allen  
 Director, Office of Appeals

cc: Director, Region 3

International Talc Co., Inc., and/or St. Lawrence Liquidating Corp., 95 E. Main St., Gouverneur, New York 13642

Edmund J. Duffy, Esq., Robert E. Gray, Esq., Bartle, McCrane, Duffy & Murray, 251 River St., Troy, New York 12180

Talc Workers Union, Local No. 22727, AFL-CIO, Attn: Steven Bressette, Sec.-Treas., Box 108, Hailesboro, New York 13645

Exhibit "3"

**Exhibit 4 – Letter, dated 2-28-75  
attached to Kuehl Affidavit.**



EDMUND L. SHEA  
JUSTICE

STATE OF NEW YORK  
SUPREME COURT, CHAMBER OF  
SUITE 202  
BRIDGE AND PORT AUTHORITY BUILDING  
ODGENSBURG, NEW YORK 13669

February 28, 1975

Bartle, McGrane, Duffy & Murray, Esqs.  
251 River Street  
Troy, New York 12180

Conboy, McKay, Bachman & Kendall, Esqs.  
407 Sherman Street  
Watertown, New York 13601

Biltman & King, Esqs.  
500 Chamber Building  
351 South Warren Street  
Syracuse, New York 13202

RE: St. Lawrence Liquidating Corp.  
v. Talc Workers Union Local #22727

Gentlemen:

In reading over the papers on the motion made by Petitioner for a stay of arbitration in the above-entitled matter, it appears one of the arguments advanced by both parties is that the letter of July 26, 1964, from Talc Workers Union Local No. 22727, AFL-CIO, to International Talc Company, Inc. and/or St. Lawrence Liquidating Corporation was insufficient in form to start the arbitration process.

Therefore, it would seem the demand could be deemed withdrawn and the parties placed in their original position as if such letter was not sent.

If I am correct in such view, it would not seem necessary to consider the motion further. Unless I hear to the contrary, an order, if necessary, may be submitted accordingly. Meanwhile, I am returning the papers submitted by the respective parties.

Very truly yours,

*Edmund L. Shea*  
Edmund L. Shea  
Supreme Court Justice

EIS/hg

*Exhibit "4"*

Exhibit 5 – Pension Plan and Amendments  
attached to Kuehl Affidavit.

PENSION PLAN FOR  
HOURLY PAID EMPLOYEES OF  
INTERNATIONAL TALC COMPANY, INC.

Exhibit "5"

Exhibit 5 - Pension Plan and Amendments  
attached to Kuehl Affidavit.

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Exhibit 5 - Pension Plan and Amendments  
attached to Kuehl Affidavit.

ARTICLE I

DEFINITIONS

As used herein, unless otherwise required by the context, the following words and phrases shall have the meanings indicated:

1. Plan means the pension plan contained herein or as duly amended.
2. Employer or Company means the International Talk Company, Inc., and/or Osgoatchie Light and Power Company.
3. Union means the Federal Union No. 22727, American Federation of Labor.
4. Board means the Board of Directors of the Company.
5. Fund means the pension fund created in accordance with Article VII hereof.
6. Employee means any person employed by the Employer who is within the appropriate bargaining unit represented by the Union.
7. Participant means an Employee who becomes a participant as provided in Article II hereof.
8. Contingent Annuitant means a designated person as described in Article V.
9. Trustee means the State Bank of Albany, Trustee of the Fund, appointed as provided in Article VII, or any successor trustee or trustees.
10. Committee means the Administrative Committee provided for in Article VIII hereof.
11. Contributions means the payments as provided in Article VII hereof.
12. Continuous Service means uninterrupted service by an Employee from the date he last entered employment of the Employer until the date his employment

Exhibit 5 - Pension Plan and Amendments  
attached to Kuehl Affidavit.

shall be terminated by death, retirement, resignation or discharge;  
provided, however, the Continuous Service of any Employee shall  
not be deemed to be interrupted by:

- (a) any leave of absence or vacation authorized by the Employer.
- (b) any service in the Armed Forces of the United States in time  
of war or national emergency, provided the Employee was  
employed by the Employer immediately prior to entry into  
such Armed Forces and further provided the Employee returns  
to employment with the Employer within ninety days of the  
date on which he shall have the right of release from such ser-  
vice or within such longer period as may be provided by the  
laws of the United States applicable thereto.

(c) any layoff period of less than twelve months' duration,  
provided further, that, for Employees formerly employed by the Loomis  
Company, and so employed at the time of acquisition of such Company  
by International Talc Company, Inc., the last date of entry into em-  
ployment of the Employer referred to in this definition shall mean the  
last date of entry into employment with Loomis.

13. Credited Service means the total of Credited Past Service and Credited Future Service.

14. Credited Past Service means Continuous Service, as an Employee, as of the Effective Date.  
Such service shall be stated as completed years and months, each  
completed month being counted as one-twelfth of a year.

15. Credited Future Service means Continuous Service, as an Employee, after the Effective Date,  
and shall be determined in accordance with the following tables:

Exhibit 5 - Pension Plan and Amendments  
attached to Kuehl Affidavit.

TABLE A: Applicable to Employees In No. 3 Mine; provided,  
that the normal work week for such Employees is a four-day  
week, or a thirty-two (32) hour week.

<u>Number of Hours Worked In a Calendar Year</u>	<u>Credited Service for Such Calendar Year</u>
1,300 hrs. or more	1 year
1,050 hrs. but less than 1,300 hrs.	3/4 of a year
800 hrs. but less than 1,050 hrs.	1/2 of a year
less than 800 hrs.	0

TABLE B: Applicable to all other Employees, and to Employees  
In No. 3 Mine when the normal work week for such Employees  
is a five-day week, or a forty (40) hour week.

<u>Number of Hours Worked In a Calendar Year</u>	<u>Credited Service for Such Calendar Year</u>
1,600 hrs. or more	1 year
1,300 hrs. but less than 1,600 hrs.	3/4 of a year
1,000 hrs. but less than 1,300 hrs.	1/2 of a year
less than 1,000 hrs.	0

Proportionate credit will be granted, based on the ratio of work, for  
years when an Employee is not employed for the full year, such as  
his first year of employment, or the year in which he retires. Also,  
Credited Service shall be granted, in addition to the above, for ab-  
sence due to an injury incurred on the job. Such additional hours  
of credit, estimated on a normal work basis, shall be added to the  
number of hours worked before determination is made as to the Credi-  
ted Service for pension purposes.

16. Trust Agreement

means the agreement entered into between the Company and the  
Trustee.

17. Effective Date

means January 1, 1960.

Exhibit 5 — Pension Plan and Amendments  
attached to Kuehl Affidavit

ARTICLE II

ELIGIBILITY

Each Employee in the employ of the Employer on September 1, 1959 shall become a Participant as of the Effective Date. Credited Service shall be granted under the Plan for employment prior to the Effective Date, in accordance with Article IV and the definitions of Employee, Continuous Service and Credited Service in Article I.

Each person entering the employ of the Employer after September 1, 1959 shall become a Participant on the first day of the month following or coinciding with the day he becomes an Employee, or the Effective Date, if later.

If an Employee, whose Continuous Service is interrupted (see definition of Continuous Service in Article I), is re-employed he shall, for purposes of the Plan, be considered as a new Employee and any benefits he may receive under the Plan shall be based upon service after re-employment.

Exhibit 5 – Pension Plan and Amendments  
attached to Kuehl Affidavit.

### ARTICLE III

#### RETIREMENT DATE

##### A. NORMAL RETIREMENT DATE

The Normal Retirement Date of a Participant shall be the first day of the month next following or coinciding with his 65th birthday or the Effective Date, if later; provided, such Employee has completed fifteen years of Continuous Service.

##### B. DEFERRED RETIREMENT DATE

A Participant may, if he is physically able, with the consent of the Employer, remain in active employ of the Employer beyond his Normal Retirement Date for such period or periods as the Employer, from time to time, shall approve, and the Participant shall retire from the employment of the Employer at the end of the last approved period. The Employer may require that an Employee requesting such deferral submit to a medical examination.

##### C. EARLY RETIREMENT DATE

A Participant may, with the consent of the Employer, retire any time after attainment of age 55 and before his Normal Retirement Date, provided such Employee has completed at least fifteen years of Continuous Service.

##### D. RETIREMENT DUE TO DISABILITY

A Participant may be retired before his Normal Retirement Date provided:

(a) he is totally and permanently disabled and,

(b) he has completed at least fifteen years of Continuous Service. (AMENDMENT  
1-1-70)

To be considered as totally and permanently disabled a Participant must be totally disabled by bodily injuries or disease so as to be prevented thereby from engaging in any occupation or

Exhibit 5 - Pension Plan and Amendments  
attached to Kuehl Affidavit.

employment for remuneration or profit.

Applicants for retirement due to disability shall be referred to a medical examiner, selected by the Committee, who shall make known his findings and recommendations to the Committee. The Committee shall then determine the eligibility of the Participant for disability retirement.

ARTICLE IVRETIREMENT BENEFITA. NORMAL RETIREMENT BENEFIT

A Participant shall, upon retirement at his Normal Retirement Date, receive a monthly retirement benefit which shall commence on such retirement date and shall be continued on the first day of each month thereafter during his lifetime. The amount of such monthly retirement benefit shall be:

Two dollars (\$2.00) for each year of Credited Service,  
with a maximum credit of thirty years of Credited Service.

AMENDED 7-1-70  
7-1-72  
7-1-73

B. DEFERRED RETIREMENT BENEFIT

A Participant shall, upon retirement at his Deferred Retirement Date, receive a monthly retirement benefit which shall commence on such retirement date and shall be continued on the first day of each month thereafter during his lifetime. The amount of each such monthly retirement benefit shall be:

Two dollars (\$2.00) for each year of Credited Service at  
his Deferred Retirement Date, with a maximum credit of  
thirty years of Credited Service.

AMENDED 7-1-70  
7-1-72  
7-1-73

C. EARLY RETIREMENT BENEFIT

A Participant shall, upon retirement at his Early Retirement Date, receive a monthly retirement benefit which shall commence on such retirement date and shall be continued on the first day of each month thereafter during his lifetime. The amount of each such monthly retirement benefit shall be equal to the actuarial equivalent of the amount of the accrued Normal Retirement Benefit, as defined herein.

Exhibit 5 — Pension Plan and Amendments  
attached to Kuehl Affidavit.

The amount of the accrued Normal Retirement Benefit shall be calculated as follows:

1. For Participants who would not have completed at least thirty years of Credited Service at Normal Retirement Date, assuming Continuous Service until such Normal Retirement Date, the amount of accrued Normal Retirement Benefit will be equal to two dollars (\$2.00) a month for each year of Credited Service at the Early Retirement Date.
2. For Participants who would have completed more than thirty years of Credited Service at Normal Retirement Date, assuming Continuous Service until such Normal Retirement Date, the amount of accrued Normal Retirement Benefit shall be equal to the maximum benefit of sixty dollars (\$60.00) a month multiplied by the factor determined by dividing the actual number of years of Credited Service at Early Retirement Date by the total number of years of Credited Service, assuming Continuous Service until Normal Retirement Date.

D. DISABILITY RETIREMENT BENEFIT

A Participant shall, upon retirement due to disability, receive a monthly retirement benefit which shall commence on the first day of the month following such retirement date and shall be continued on the first day of each month thereafter during his lifetime. The amount of such monthly retirement benefit shall be:

Two dollars (\$2.00) per month for each year of Credited Service,  
with a maximum credit of thirty years.

Amended  
7-1-70  
7-1-72  
7-1-74

ARTICLE VOPTIONAL METHODS OF RETIREMENT PAYMENTS

Each Participant shall have the right at any time and from time to time prior to his retirement date, to elect to have his retirement benefit payable under any one of the options hereinafter set forth in this Article V, in lieu of the retirement benefit otherwise provided for in Article IV. The amount of any optional retirement benefit shall be the actuarial equivalent of the amount of such retirement benefit that otherwise is payable to him as provided for in Article IV. The Participant shall make such an election by written request to the Committee and such an election will be subject to the approval of the Committee.

Option 1 - JOINT AND LAST SURVIVOR OPTION

A Participant may elect to receive a decreased retirement benefit during his lifetime and have such decreased retirement benefit (or a designated fraction thereof) continued after his death to another person, called a Contingent Annuitant, during the lifetime of the Contingent Annuitant. This Option may not be elected by a Participant if the Social Security Option following has previously been elected.

Option 2 - SOCIAL SECURITY OPTION

If a Participant retires under the Early Retirement provision (Article III, C), he may elect to receive an increased retirement benefit up to Normal Retirement Date and a decreased retirement benefit thereafter in order to provide, to as great an extent as possible, a more nearly level retirement benefit when such decreased retirement benefit is added to his primary benefits under the Federal Social Security Act. The election of this Option will automatically revoke any election under the Joint and Last Survivor Option above.

Exhibit 5 — Pension Plan and Amendments  
attached to Kuehl Affidavit.

The election by a Participant of either the above Options shall be null and void if the Participant dies prior to retirement, and the election by a Participant of Option 1 above shall be null and void if the designated Contingent Annuitant dies before the Participant's retirement.

If a Participant is retired due to disability, any election of Option 1 above shall not become effective until the Participant's Normal Retirement Date.

A Participant who has elected either of the Options above may, at any time prior to his retirement, revoke such an election by written notice to the Committee.

ARTICLE VI

TERMINATION OF SERVICE

AMENDED 7-1-70  
7-1-72  
7-1-73

A. TERMINATION OF SERVICE WITH VESTING

Upon termination of service, other than for retirement or death, after attainment of age 40 and completion of fifteen years of Continuous Service, a Participant will be eligible to receive a monthly pension, commencing at Normal Retirement Date, equal to the accrued Normal Retirement Benefit.

The amount of the accrued Normal Retirement Benefit shall be calculated as follows:

1. For Participants who would not have completed at least thirty years of Credited Service at Normal Retirement Date, assuming Continuous Service until such Normal Retirement Date, the amount of accrued Normal Retirement Benefit will be equal to two dollars (\$2.00) a month for each year of Credited Service.
2. For Participants who would have completed more than thirty years of Credited Service at Normal Retirement Date, assuming Continuous Service until such Normal Retirement Date, the amount of accrued Normal Retirement Benefit shall be equal to the maximum benefit of sixty dollars (\$60.00) a month multiplied by the factor determined by dividing the actual number of years of Credited Service at date of termination by the total number of years of Credited Service, assuming Continuous Service until Normal Retirement Date.

B. TERMINATION OF SERVICE WITHOUT VESTING

Upon termination of service before attainment of age 40 and completion of fifteen years of Continuous Service, a Participant will not be eligible to receive any benefits under the Plan.

Exhibit 5 – Pension Plan and Amendments  
attached to Kuehl Affidavit.

ARTICLE VII

FUNDING

A. CONTRIBUTIONS

Participants will not be required to make any Contributions under the Plan. The entire cost of the Plan shall be borne by the Company.

Contributions shall be paid to the Trustee at such times and in such amounts as shall be decided by the Company.

All Contributions shall be irrevocable and may be used only for the benefit of the Participants and Contingent Annuitants.

B. PENSION FUND

The Company shall enter into an Agreement with the Trustee, appointed by the Company, whereunder the Trustee will receive, invest and administer as a Trust Fund all Contributions made under this Plan by the Company. Such Trust Agreement is attached hereto and incorporated by reference as a part of this Plan, and the rights of all persons hereunder are subject to the terms of the Trust Agreement. The Trust Agreement specifically provides, inter alia, for the investment and reinvestment of the Fund, the responsibilities and immunities of the Trustee, compensation of the Trustee, removal of the Trustee and appointment of a successor, accounting by the Trustee and the disbursement of the Fund.

The Trustee shall, in accordance with the terms of such Trust Agreement, accept and receive all sums of money paid to it, from time to time, by the Company, and shall hold, invest, reinvest, manage and administer such monies and the increment, increase, earnings and income thereof as a Trust Fund for the benefit of Participants and Contingent Annuitants hereunder.

The Company shall have made periodic actuarial valuations of the Plan by an Actuary,

Exhibit 5 – Pension Plan and Amendments  
attached to Kuehl Affidavit.

designated by the Company, and shall approve the actuarial assumptions to be used in such actuarial valuations.

Exhibit 5 – Pension Plan and Amendments  
attached to Kuehl Affidavit.

### ARTICLE VIII

#### ADMINISTRATIVE COMMITTEE

##### A. APPOINTMENT AND TERM OF OFFICE

There shall be established an Administrative Committee, consisting of four members, two of whom shall be appointed by the Company (hereinafter referred to as Company members), and two of whom shall be appointed by the Union (hereinafter referred to as Union members). Either the Company or the Union, at any time, may remove a member appointed by it and may appoint a member to fill any vacancy among the members appointed by it. Both the Company and the Union shall notify each other in writing of the members respectively appointed by them before any such appointments shall be effective.

##### B. ORGANIZATION OF COMMITTEE

The Company and the Union members of the Committee shall serve without compensation from the Fund, but shall be reimbursed for all reasonable and necessary expenses which they, in the performance of such services, may incur.

The Committee shall hold such meetings upon such notice, at such place or places and at such time or times as the Committee may, from time to time, determine.

To constitute a quorum for the transaction of business, there shall be required to be present at any meetings of the Committee at least one Company member and one Union member. At all meetings of the Committee the Company members shall have a total of two votes and the Union members shall have a total of two votes. Except on matters with which the Plan itself specifies otherwise, decisions of the Committee shall be by the majority of the votes cast.

Exhibit 5 – Pension Plan and Amendments  
attached to Kuehl Affidavit.

C. POWERS AND DUTIES OF THE COMMITTEE

The Committee shall be empowered to administer the Plan, except those provisions for which administration is otherwise provided. Not in limitation, but in amplification of the foregoing, the Committee shall have power to construe this Plan and to determine all questions that may arise hereunder. It shall determine all questions relating to the eligibility of Employees to participate in this Plan and the amount of retirement benefit or other benefits to which any Participant or Contingent Annuitant may become entitled hereunder. All disbursements from the Fund by the Trustee shall be made upon, and in accordance with, the written directions of the Committee. The decisions of the Committee upon all matters within the scope of its authority shall be final.

The Committee shall establish rules and procedures to be followed by the Participants and Contingent Annuitants in filing applications for benefits and for furnishing and verifying proofs necessary to establish age, years of Credited Service and any other matters required in order to establish the right to benefits in accordance with the Plan.

The Committee shall receive all applications for benefits. Upon receipt by the Committee of such an application, it shall determine all facts which are necessary to establish the right of the applicant to benefits under the provisions of the Plan and the amount thereof as herein provided. Upon request, the Committee may afford any applicant the right of a hearing with respect to any finding of fact or determination.

The Committee shall prepare and distribute to the Employees, in such a manner as it shall deem appropriate, information concerning the Plan.

To enable the Committee to perform its functions, the Employer and the Union shall, upon request in writing, supply full and timely information to the Committee of all matters relating to the Participants, including their retirement, death or other cause for termination of employment and such other pertinent facts as the Committee may require.

Exhibit 5 – Pension Plan and Amendments  
attached to Kuehl Affidavit.

The Committee shall have no power, in any way, to modify, alter, add to or subtract from any provisions of the Plan.

D. RECORDS OF THE COMMITTEE

All acts and determinations of the Committee shall be duly recorded and all such records, together with such other documents as may be necessary for the administration of the Plan, shall be preserved in the custody of the Committee. Such records and documents shall, at all times, be open for inspection and for the purposes of making copies by any person designated by the Committee.

E. LIABILITY OF COMMITTEE

Members of the Committee shall be entitled to rely upon all tables, valuations, certificates and reports furnished by the Company, the Union or the Trustee. Neither the Committee nor any of its members, nor the Company, nor any officer or other representative of the Company, nor the Union, nor any officer or other representative of the Union, shall be liable because of any act or failure to act on the part of the Committee, or any of its members, to any person whatsoever, except that nothing herein shall be deemed to relieve any such individual from liability for his own willful misconduct or gross negligence.

ARTICLE IXAMENDMENT AND TERMINATION OF THE PLANA. AMENDMENT OF THE PLAN

1. This Plan shall continue in full force and effect, with no amendments, to and including January 1, 1965 and shall automatically continue thereafter during periods of five (5) years each, unless either party notifies the other in writing, not less than sixty (60) days prior to any expiration date, that an amendment is desired. If, pursuant to such negotiations, an agreement, or renewal, or amendment is not reached prior to the then current expiration date, this Plan shall continue in force for an additional thirty (30) days after such expiration date, unless it is extended for a further period by mutual agreement of the parties.
2. Notwithstanding the above, in the event that any revision in this Plan is necessary in order to maintain approval by the Commissioner of Internal Revenue of this Plan as a qualified Plan, (i) qualifying for exemption from taxation under Section 501 of the Internal Revenue Code, or any other applicable section of the Federal Tax Laws, (as such sections are now in effect or are hereafter amended or adopted), and (ii) entitling the Company to deduction for Contributions under Section 404 of the Internal Revenue Code, or any other applicable section of the Federal Tax Laws, (as such sections are now in effect or are hereafter amended or adopted), the Company and the Union shall make, or consent to, such necessary revisions adhering as closely as possible to the intent of the parties as expressed in this Plan.

B. TERMINATION OF THE PLAN

1. In the event of termination of the Plan, all funds then in the possession of the Trustee will vest in former Participants receiving or eligible to receive benefits, Contingent Annui-

Exhibit 5 — Pension Plan and Amendments  
attached to Kuehl Affidavit.

sants and Participants then covered under the Plan. Under no conditions will any part of the Fund at any time revert to the Company except that, if, after the satisfaction of all liabilities under the Plan, there are any monies remaining in the Fund due to actuarial error, those monies shall then be returned to the Employer.

2. The Fund shall be allocated by the Committee to provide benefits in the following manner and order to the extent of the sufficiency of such Fund:

- (i) First, to provide the benefits payable from the Fund of retired Participants, of Contingent Annuitants who are in the course of receiving benefits from the Fund on the date of termination, and of Participants who, on the date of termination, have reached their Normal Retirement Date but have not retired;
- (ii) Second, if there is any balance in the Fund remaining after complete allocation for the purposes of the preceding paragraph (i), to provide the benefits payable from the Fund of former Participants with vested rights who have not reached Normal Retirement Date and of other Participants in the proportions of the then reserve of the benefits of such former Participants and Participants, calculated in accordance with the provisions of the Plan, but based upon years of Credited Service as of the date of termination of the Plan.

If the balance of the Fund remaining for allocation under any of the paragraphs immediately preceding is insufficient to provide the allocations under such paragraphs in full, the individual allocations shall be reduced pro rata, and no allocations shall be made under any subsequent paragraph.

3. The allocations of the Fund provided for in this section may, as decided by the Company, be carried out through the continuance of the Fund, or the Fund may, at any time, be liquidated and insurance company contracts purchased to provide the benefits determined in

Exhibit 5 — Pension Plan and Amendments  
attached to Kuehl Affidavit.

accordance with this section, or the Fund may be distributed in lump sums to persons entitled to such benefits on the basis of equivalent actuarial values of the allocations.

Such application and allocation shall be final and binding on the parties and on the former Participants, the Contingent Annuitants and the Participants.

Exhibit 5 – Pension Plan and Amendments  
attached to Kuehl Affidavit.

ARTICLE X

MISCELLANEOUS

The headings and subheadings in the Plan have been inserted for convenience of reference only and are to be ignored in any construction of the provisions hereof.

In the construction of the Plan the masculine shall include the feminine and the singular the plural in all cases where such meanings would be appropriate.

The Plan shall be construed in accordance with laws of the State of New York.

Participation in the Plan shall not give any Employee the right to be retained in the employ of the Employer nor, upon dismissal or upon his voluntary termination of employment, to have any right or interest in the Fund other than as is herein provided.

Any payment to a former Participant, Participant or Contingent Annuitant in accordance with the provisions of the Plan shall, to the extent thereof, be in full satisfaction of all claims hereunder against the Trustee, the Union and the Employer, any of whom may require such former Participant, Participant or Contingent Annuitant, as a condition precedent to such payment, to execute a receipt and release therefore in such form as shall be determined by the Trustee, the Union or the Employer, as the case may be.

No benefit hereunder shall be subject, in any manner, to alienation, anticipation, sale, transfer, assignment, pledge, encumbrance, garnishment, attachment, execution or levy of any kind, and any attempt so to alienate, anticipate, sell, transfer, assign, pledge, encumber or levy the same shall be void.

If any former Participant, Participant or Contingent Annuitant is a minor or is, in the judgment of the Committee, otherwise legally incapable of personally receiving and giving a valid receipt for any payment due him under the Plan, the Committee may, unless and until claims shall

Exhibit 5 – Pension Plan and Amendments  
attached to Kuehl Affidavit.

have been made by a duly appointed guardian or committee of such person, make such payment or any part thereof to such person's spouse, child, parent, brother or sister, or other person deemed by the Committee to have incurred expense for or assumed responsibility for the expenses of such person. Any payment so made shall be a complete discharge of any liability under the Plan for such payment.

In case of a dispute between the Company and the Union as to the meaning, application or performance of any of the terms and provisions of the Plan, it shall be settled by an arbitrator selected by the Company and the Union. In case the parties are unable to agree upon the selection of such arbitrator within thirty (30) calendar days after one party shall have given the other party written notice of its desire that such an arbitrator be selected, then any such arbitrator shall be selected through the American Arbitration Association in accordance with its rules and from a panel of arbitrators familiar with pension plan problems. The decision of such arbitrator shall be final and binding upon the parties. The fees and expenses of such arbitrator shall be paid one-half by the Company and one-half by the Union. Each party shall pay the fees and expenses of its witnesses.

The provisions of this Plan, and the meaning, application or performance hereof, shall not be subject to the grievance and arbitration provisions of the Labor Agreement or of any other labor agreements hereafter in effect between the Company and the Union.

Exhibit 5 — Pension Plan and Amendments  
attached to Kuehl Affidavit.

IN WITNESS WHEREAS, the parties hereto have caused this Agreement, made and entered  
into this      day of      , 1960, to be executed in their respective names by their duly  
authorized officers under their corporate seals the day and year first above written.

INTERNATIONAL TALC COMPANY, INC.

By: Robert H McCarthy  
Pres.

Attest:

---

FEDERAL UNION NO. 22727,  
AMERICAN FEDERATION OF LABOR

By: William W. Phe Pres.

Attest:

Stephen Biscuit Secretary

Exhibit 5 – Pension Plan and Amendments  
attached to Kuehl Affidavit.

PENSION PLAN FOR  
HOURLY PAID EMPLOYEES OF  
INTERNATIONAL TALC CO., INC.

AMENDMENTS

Article IV

Amend Section A by adding the following:

"The amount of monthly retirement benefit payable to a Participant whose Normal Retirement Date is January 1, 1974, or later, shall be:

Seven dollars (\$7.00) for each year of Credited Service,  
with a maximum credit of thirty years of Credited Service."

Amend Section B by adding the following:

"The amount of monthly retirement benefit payable to a Participant whose Deferred Retirement Date is January 1, 1974, or later, shall be:

Seven dollars (\$7.00) for each year of Credited Service at  
his Deferred Retirement Date, with a maximum credit of thirty  
years of Credited Service."

Amend Section C by adding the following:

"Effective January 1, 1974 the amount in sub-section (1) above shall be seven dollars (\$7.00) instead of six dollars (\$6.00) and the amount in sub-section (2) above shall be two hundred and ten dollars (\$210.00) instead of one hundred and eighty dollars (\$180.00).

Amend Section D by adding the following:

"The amount of monthly retirement benefit payable to a Participant upon retirement due to disability on or after January 1, 1974 shall be:

Seven dollars (\$7.00) for each year of Credited Service, with a maximum credit of thirty years of Credited Service."

Exhibit 5 – Pension Plan and Amendments  
attached to Kuehl Affidavit.

Article VI

Amend Section A by adding the following:

"Effective January 1, 1974, the amount in sub-section (1) above shall be seven dollars (\$7.00) instead of six dollars (\$6.00) and the amount in sub-section (2) above shall be two hundred and ten dollars (\$210.00) instead of one hundred and eighty dollars (\$180.00)."

## AFFIDAVIT OF FREDERIC S. KENDALL, ESQ.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

## IN THE MATTER OF THE ARBITRATION

Between

STEPHEN E. BRESSETTE, as Secretary-Treasurer  
of Local No, 22727, AFL-CIO, American  
Federation of Labor and Congress of  
Industrial Organizations,  
Box 108  
Hailesboro, New York, 13645,

Petitioner,

-and-

INTERNATIONAL TALC COMPANY, INC.  
95 East Main Street  
Gouverneur, New York 13642,

AFFIDAVIT

Civil No.

-and-

ST. LAWRENCE LIQUIDATING CORPORATION,  
P. O. Box 576  
Troy, New York 12180,

Respondents.

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STATE OF NEW YORK )  
COUNTY OF JEFFERSON) ss.:  
CITY OF WATERTOWN )

FREDERIC S. KENDALL, Esq., being duly sworn, deposes and says  
that:

1. He is an attorney duly licensed to practice in the State of New York and is a member of the firm of Conboy, McKay, Bachman & Kendall, 407 Sherman Street, Watertown, New York, 13601. He is the attorney

## Affidavit of Frederic S. Kendall, Esq.

for the respondents in this matter and makes this affidavit in opposition to the petition to compel arbitration.

2. The respondents have received no notice from petitioner as to what specific disputes they want to arbitrate. The notice (petitioner's Exhibit "B") is at best a conclusory statement. The dispute is not identified. This is essential before proceeding to arbitration as respondents can not possibly be expected to proceed to arbitration without being apprised of the specific issues to be arbitrated.

3. The petition to compel arbitration is inappropriate at this time as there is a motion for a stay of arbitration of an hourly pension agreement dated April 14, 1960, pending in St. Lawrence County Supreme Court, as indicated by a copy of Judge Shea's letter attached as Exhibit "4".

4. The petition to compel arbitration is inappropriate at this time as the petitioner is currently appealing a decision made by the National Labor Relations Board (see Exhibits "1", "2" and "3"). That proceeding involved many of the matters of which the petitioner currently complains and it has been held that the Company has notified and bargained with the Union fairly.

5. Pursuant to the foregoing reasons, there is no arbitrable dispute or controversy.

WHEREFORE, deponent respectfully requests the Court issue an order dismissing the petition to compel arbitration, together with such other and further relief as this Court may deem just and proper.

Affidavit of Frederic S. Kendall, Esq.

Frederic S. Kendall

Frederic S. Kendall

Sworn to before me this  
6th day of March, 1975.

Mary H. Klein (Seal)  
NOTARY PUBLIC

MINUTES OF PROCEEDINGS, held on 4-14-75. 1

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

-----  
STEPHEN E. BRESSETTE, etc. Petitioner,

-against-

-----  
INTERNATIONAL TALC COMPANY, INC.  
and ST. LAWRENCE LIQUIDATING CORP. Respondent.

Civil No. 75-CV-106

The following proceedings took place on the 14th day  
of April, 1975, At the United States District Court, Federal  
Building, Syracuse, New York before HONORABLE EDMUND PORT,  
United States District Judge.

A P P E A R A N C E S:

BLITMAN & KING, ESQS.  
CHARLES E. BLITMAN, ESQ.  
Of Counsel  
Attorneys for Plaintiff  
351 South Warren Street  
Syracuse, New York

EDMUND J. DUFFY, ESQ.  
Attorney for defendant.  
251 River Street  
Troy, New York

THE COURT: Before you start your argument, is there any question as to whether or not I can decide this case on the basis of the papers that are before me, or is there an evidentiary hearing necessary?

MR. DUFFY: I don't believe that there is any evidentiary hearing necessary, however I do have a former manager available if the court wishes his testimony.

THE COURT: No, I wouldn't take the evidence now, I would fix a date, but what about you, Blitman?

MR. BLITMAN: Your Honor, subject to your questions here, I don't believe there is any evidentiary matters.

THE COURT: If you gentlemen are satisfied that the facts are before me in the papers, I will dispose of it on the facts.

MR. DUFFY: The respondent is satisfied.

MR. BLITMAN: I am also, Your Honor.

THE COURT: All right.

MR. BLITMAN: The International Talc Company formerly did and presently does perform certain functions in northern New York with reference to a talc company. They recognized and bargained with the petitioner in this particular matter and had a collective bargaining agreement.

The contract has the standard broad grievance

arbitration provision and sometime in May last year the company allegedly made a decision to terminate a vast portion of its business, retaining control over two hydroelectric plants.

THE COURT: These hydroelectric plants, as I read the papers, were for the purpose of supplying paper --

MR. BLITMAN: I don't know what they were for.

THE COURT Is there any question about that?

MR. DUFFY: Your Honor please, originally this power was for the purposes of respondent, but then there was a lease agreement entered into between the respondent and the Niagara Mohawk, and the purchaser of the physical assets declined to take title to the power plants because the purchaser of the facility didn't want to come under the jurisdiction of the New York Public Service Commission, and the power plants have been shut down, unmanned, since May 23, the date of termination.

THE COURT: Is there any question about that fact?

MR. BLITMAN: I don't have any information as to whether they are shut down or not.

MR. DUFFY: It is readily available.

MR. KING: I don't doubt what Mr. Duffy says, I

personally don't know, and I would respectfully submit whether or not they are shut down is not controlling here, but rather the fact the company does own them and possesses whatever control it wants over them.

That subsequent to May 23 when discussions were entered into between the parties with respect to the partial closing down of the company, a dispute arose with regard to the obligations of the employer.

A grievance was filed, and that brings us here today. At this point the petitioner is asking that the employer proceed to arbitration, and I would respectfully submit to you, Your Honor, with reference to the law --

THE COURT: What do you want arbitrated now?

MR. BLITMAN: We would like to arbitrate -- there is a question with respect to the duties of the employer relative to successor language in the contract.

THE COURT: Point out the language, that is what I was looking for. Are you talking about the introductory language?

MR. BLITMAN: Yes, in the preamble.

THE COURT: I am familiar with that, I read that.

MR. BLITMAN: There is a section 1(e), there is language which perhaps could be interpreted, Your Honor, with reference to petitioner's position.

THE COURT: But the successor is not made a party, if there is a successor?

MR. BLITMAN: That's correct.

THE COURT: You are not claiming any rights against them?

MR. BLITMAN: Presently we have no claim against the purchaser.

THE COURT: Now 1(e)?

MR. BLITMAN: Yes, Your Honor, section 1(e) which is found on page 4 of the contract.

THE COURT: Well, the contract attached to the petition was practically illegible in most parts.

MR. DUFFY: If Mr. Blitman would agree that this is a true and correct copy of the contract, I would be willing to supply it to the court.

THE COURT: Some sections I could read.

You are talking about new installations now, the paragraph headed "new installations"?

MR. BLITMAN: Yes, Your Honor.

THE COURT: All right, I can read it.

MR. BLITMAN: Also there would be section 11 (a), Your Honor, which is found on page 18 of the contract.

My portion of the xerox copy is not very clear. We can supply a readable copy to the court.

In addition to that, there is a question with

reference to pension benefits, which may be due employees.

THE COURT: That is clearly raised, the pension question.

MR. BLITMAN: Yes, that is really the gist of the matter between the parties, and I woudl' respectfully call your attention to the fact it is mentioned in the contract.

THE COURT: All right, so I think what it really boils down to are the rights under the pension agreement.

MR. BLITMAN: That is the essence of the petitioner's claim here, although quite frankly, Your Honor, I wouldn't want the petitioner to be foreclosed from raising any other contractual rights is may want to.

THE COURT: I suppose the petitioner's claims would depend on the ingenuity of counsel and the petitioner, but right now as I read the claim of the petitioner it relates to the pension provisions.

MR. BLITMAN: Among other claims, you are correct, Your Honor, and I think the law with reference to what I respectfully submit is the court's duty is not only established by the Supreme Court, but also by yourself.

THE COURT: That is really good authority.

Minutes of Proceedings, held on 4-14-75.

MR. BLITMAN: I would think so, Your Honor, and I would respectfully submit that the prerequisites necessary to have an order to compel arbitration are -- have been met.

THE COURT: All right, Mr. Duffy.

MR. DUFFY: If Your Honor please, the union contract under which arbitration is sought in this proceeding, there is an entirely different arbitration procedure under the pension agreement, in fact there was up in St. Lawrence County a motion to stay arbitration demanded under the pension clause.

Now the union contract, the one that is the subject --

THE COURT: Who sought that stay?

MR. DUFFY: We did, Your Honor. There was a similar notice served besides the notice that the petitioner moves on, that we violated the terms of the pension agreement, and that resulted in a hearing or submission on affidavits, and Judge Shea, I believe it is part of the respondent's exhibit, that Judge Shea wrote the party sometime in March or February that he was leaving his parties in status quo because he assumed that there was no demand for arbitration.

Now we have been made parties to an unfair labor hearing, or unfair labor practice. These matters were

all aired as to whether we terminated our plant, whether we ceased operations, there hasn't been one union employee working up there since the date of the announcement on May 23. The only thing we have had in the way of business activity was a clerical and supervisory office opened in a small manner to accept claims and to answer any inquiries that might be made, but most important, the July 26 notice doesn't constitute any demand to arbitrate any specific issue, and if we are made to go to arbitration, we don't know what we are going to arbitrate, and surely there is no doubt that the respondent had a right to sell his physical assets and to cease doing business, which we have done, and the only reason that we have the power plants is that they are white elephants, that the purchaser doesn't want them, and I hope no one from Niagara Mohawk is here, we are trying to unload them on Niagara Mohawk. But if the respondent is made to go to arbitration, we have to go to an arbitrator from the New York State Mediation Board. If we go to arbitration under the pension contract, we go to the American Arbitration Association.

Now the IRS has terminated our pension, given us authority to terminate it as of May 23, and all of the monies plus a voluntary contribution have been

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turned over to the Traveler's for payment to all of the beneficiaries and all of the union workers.

THE COURT: What do you say about the acceptance of these benefits?

MR. BLITMAN: By whom?

THE COURT: Under the pension plan?

MR. BLITMAN: Well, subsequent to the termination of the employees -- there were various meetings that the parties entered into and unilaterally, without the petitioner's acquiescence, the employer sent out certain checks to certain individuals. I would submit the acceptance of these checks in any way is not even before the court, and, number two, has no relevancy with reference to the petitioner's claim under the contract.

Now any proceedings that took place before the NLRB, Your Honor, would be relative to the NLRB Act, and would not necessarily preclude any contractual violation that an arbitrator may or may not find. I submit it is not the court's function to get into the merits of the dispute.

We have a broad arbitration clause, any and all disputes. The notice that was sent clearly mentions the pension agreement, clearly mentions the partial closing and mentions the contract. There is no

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question there is a contract, and I would respectfully submit it is for the arbitrator to say that the -- what the issue is going to be, not the court.

THE COURT: Doesn't the court have two things? You are citing my Warren case. What I found there, I had to find two things --

MR. BLITMAN: The existance of a collective bargaining, and whether or not the dispute is within --

THE COURT: The arbitration clause.

MR. BLITMAN: That is correct, and I would submit to you --

THE COURT: And that I recognized in that opinion that the doubts in essence are to be resolved in favor of submitting to the arbitrator, but in this case it seems to me if there is no issue about the continuance of the operation of the business, they have sold their assets and there is no issue there, now I think perhaps to complete the record I would like to swear some official if he is available and you can examine him concerning the fact that the power plant, or whatever it is, has been completely shut down since the date of this notice. I think if that is a fact it ought to be in the record.

MR. Blitman naturally says he doesn't question you in any respect, but he has no knowledge of his own,

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Testimony of Frederick Kuehl, Direct by Mr. Duffy. 11

so that I will take that proof and I will take it right now. It should take about two minutes.

MR. BLITMAN: Well, Your Honor, I would respectfully submit to you that I would like to have my client here with me if there is going to be any hearing.

THE COURT: I don't think it is necessary. I can decide it right on the papers before me, and I will, if you want me to -- all right, I will.

The only issue before me is what occurred to the power plant since the date of the notice to the employees.

FREDERICK KUEHL  
called as a witness in behalf of the respondent being first duly sworn was examined and testified as follows:

MR. DUFFY: Does the court wish me to qualify Mr. Kuehl?

THE COURT: Well, I would like to know who he is.

DIRECT EXAMINATION BY MR. DUFFY:

Q Would you state your name?

A Frederick Kuehl.

Q How do you spell it, K-u-e-h-l?

A Yes.

Q Where do you live?

A 111 West Berney Street, Gouverneur, New York.

Q St. Lawrence County?

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A Right.

Q On May 22, 1974 what was your position with the respondent?

A Vice-President of Operations.

Q And for how long had you so been?

A 24 years.

Q And are you familiar with the facts and circumstances surrounding the sale of the business and the assets of International Talc?

MR. BLITMAN: I am going to object, a conclusionary statement as to the sale of the business. I think we should find out what transpired during the time period.

MR. DUFFY: I will withdraw the question.

THE COURT: What I am interested in is the power plants since -- what is the date?

BY MR. DUFFY:

Q On May 23 did you make an announcement to the employees of International Talc?

A Yes, sir.

Q And what was the announcement?

A The announcement was in the form of a letter written by the Executive Vice-President of the company in which it was pointed out that the company had ceased operations after that date.

Q And on that date did you own power plants?

A Yes, sir.

Q Describe these plants.

A These are two water power plants run by hydraulic power on the Oswegatchie River, and one power plant has approximately 900 KW capacity, the other has 1350 KW.

Were these plants handled by International personnel?

A Yes, sir.

Q Were they members of the petitioner union in this proceeding?

A Yes, sir.

Q And since the date of May 23, 1974 what has been the condition of those power plants?

A These power plants were completely shut down and have not moved a wheel since that time, and the personnel who worked for them were also terminated.

MR. DUFFY: That's all.

THE COURT: Is it the intention of the respondent here to dispose of those plants along with --

MR. BLITMAN: Well, Your Honor, I respectfully submit that the intention of this witness here would be self-serving, and furthermore is not relevant to the proceeding with reference that -- to the facts that occurred.

THE COURT: All right, your objection is noted.

Now I will finish my question, is it the intention of

the respondent here to dispose of those plants along with other assets, all other assets?

THE WITNESS: The other assets had been disposed of approximately on May 22, and these plants had not been included in the sale, and we are attempting to sell these to a third party.

THE COURT: All right. That's all. Any examination?

CROSS EXAMINATION BY MR. BLITMAN:

Q Subsequent to May isn't it a fact that you and I and other individuals had various meetings?

A Yes, this is correct.

Q And that during those meetings these grievances were discussed?

A Not to my knowledge. The agreements -- the only question was a letter submitted, but it was indicated that certain grievances existed.

Q And do you remember you and I personally discussing, Mr. Kuehl, the fact that the union was going to be having grievances in this matter?

A At this time I don't remember any personal discussion between you and me on those facts.

Q Are you saying that didn't occur?

A I say I don't recall that occurred.

Q Do you recall giving me and instructing me as to the

procedure that should be followed in filing grievances  
subsequent to May of '74?

A I believe there was one discussion that if a grievance  
was submitted we would have to omit several of the  
preliminary stages.

Q That's correct, the contractual grievance procedure  
would not necessarily have to be followed to the  
letter, isn't that true?

A You couldn't follow it by going to step one, step  
two and step three, because these people would have  
no jurisdiction over the facts.

Q Well, not only that, Mr. Kuehl, but is it true those  
people were no longer around at the company's location?

A That is correct.

Q Isn't it true you advised me how to proceed in filing  
a grievance?

MR. DUFFY: I object to that.

THE COURT: Counsel is seeking advice. I suppose  
he can seek it from anyone, but I suppose that is  
counsel's ultimate obligation.

THE WITNESS: I don't recall that you actually  
asked me to give you counsel as to what to do.

BY MR. BLITMAN:

Q Mr. Kuehl, did you ever tell me who to file a grievance  
with? You told me to file it with you, didn't you?

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A Yes, sir, this is substantially correct, that you would submit the grievance to me as Vice-President which I think was step 4 or step 5.

Q And in fact you did receive a grievance, didn't you?

MR. DUFFY: I object on the ground that it calls for a conclusion of the witness, whether or not that is a grievance.

THE COURT: You got a letter, didn't you?

THE WITNESS: I received a letter.

THE COURT: Show it to him. I think it is all conceded that that letter was sent and received.

Whatever is in it is in it.

MR. BLITMAN: I understand that, Your Honor, that that is admitted, but Mr. Kuehl --

THE COURT: Do you want to get it unadmitted?

BY MR. BLITMAN:

Q Mr. Kuehl, you participated in negotiating the collective bargaining agreement, did you not?

A With the union, yes.

Q Did so for a number of years?

A Yes.

Q And you are familiar with, Mr. Kuehl, are you not, the grievance clause?

A Yes.

Q And are you familiar with the fact that it is broad

with respect to any and all disputes?

MR. DUFFY: I object on the ground --

THE COURT: I am not going to Mr. Kuehl for advice, counsel may, but I am not.

BY MR. BLITMAN:

Q Are you familiar with that?

A I am sorry?

THE COURT: You may say whether you are familiar with the dispute clause.

THE WITNESS: I am familiar with various clauses of the grievances -- grievance procedure.

BY MR. BLITMAN:

Q And are you specifically familiar with the grievance clause wherein any and all disputes may be pursued under that contract clause?

A Yes.

Q And can you tell me, Mr. Kuehl, whether or not there was any limitation based on that language, "any and all disputes"?

A Only that it was not absolutely essential that a grievance be continued, that either party could drop a grievance at any time.

Q That was the only limitation that you remember?

A As concerns grievances between the company and the union.

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Q Now, Mr. Kuehl, are the power plants still where they were prior to May of '74?

A Yes.

Q All the equipment necessary to run them still there?

A Yes.

Q And did you negotiate at all with the union relative to cessation of the use of that equipment and power plants?

A You mean previous to the shutdown?

Q That's correct.

A I don't quite understand the question, whether we negotiated with the union.

Q Did you discuss with them what the company was going to do relative to closing down the power plants?

A No, I did not.

Q Did anybody on behalf of the company do it?

A Not to my knowledge.

Q And after the power plants were shut down, Mr. Kuehl, did you ever discuss the closing down of the power plants with the union?

A Only that they were closed down and were going to be closed down permanently, and the people were therefore discharged or laid off.

Q That was the extent of your discussion?

A As I remember it, yes.

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Findings of the Court.

THE COURT: Mr. Blitman, you want to remember I am not an arbitrator.

MR. BLITMAN: I will, Your Honor. I have no further questions.

(Witness excused.)

THE COURT: All right, on the basis of the evidence before me and the affidavits, memorandums of the party, documentary evidence, stipulations of the parties, I find that the petition should be dismissed.

While the arbitration clause in question has language that would indicate that any dispute concerning the difference arising out of a meaning or application of the terms of the agreement should be arbitrated, the

dispute in this case appears to relate to, and the only dispute that has been pointed out to the court relates to rights under the pension agreement. That dispute does not appear to be within the dispute

clause of the collective bargaining agreement, in fact, the pension plan itself specifically makes the grievance procedure of the collective bargaining agreement inapplicable in language that is clear and unmistakable to me when it says: "The provisions of this

plan and the meaning, application or performance hereof shall not be subject to the grievance and arbitration provisions of the labor agreement or of any other labor

agreement hereinafter in effect between the company and the unions."

I think that is a clear declaration to the court and a clear statement that there are two modes of settlements set up, one with relation to the questions arising on the collective bargaining agreement, and another on questions arising under the pension plan.

The only grievance that is sought to be enforced here is the grievance procedure under the collective bargaining agreement, and while as counsel has pointed

out I am aware of the latitude that the court should observe in referring matters to an arbitrator in a labor dispute, I am also aware of the fact that the

court is not given authority to rewrite contracts for parties, but that the very underlying rationale of the whole arbitration scheme within the labor relations scheme is that it is better that the parties resolve their grievances and disputes in the manner in which they determine to resolve them rather than in the manner which the Court might to -- might want to see them.

Accordingly, the petition is dismissed. Enter an order.

Minutes of Proceedings, held on 4-14-75.

Findings of the Court.

This is to certify that the foregoing is a true and accurate transcript of the proceedings had at the time and place noted in the heading hereof.

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MARTIN L. MILLER  
Official Reporter  
United States District Court  
Northern District of New York